United States Court of Appeals

for the Second Circuit

APPENDIX

B
P/S

75-7402

In The

United States Court of Appeals

For The Second Circuit

KOOPERATIVA FORBUNDET, STOCKHOLM,

Plaintiff-Appellant,

- against -

VAASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB" and the SS URSULA JACOB, her engines, her boilers, etc.,

Defendant-Appellee.

APPENDIX

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

DOCKET ENTRIES

Jury demand date:

1a

74 Civ. 4066

D.C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
KOOPERATIVE FORBUNDET, STOCKHOLM -against- WASA LINE OY, PARTENREDEREI M.S. "URSULA JACOB" and the SS URSULA JACOB, her engines, her boilers, etc.	For plaintiff: John P. D'Ambrosio 914-592-3830 270 Tarter Road, Elmsford, N.Y. 10523 For defendant: Cichanowicz & Callan 80 Broad Street, NYC 10004 344 7042

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk		9/19/74	D'Ambrosio	15 —	
			9/24/74	"	—	15 —
J.S. 6 mailed	Marshal					
Basis of Action: Admiralty-Cargo Loss & Damage	Docket fee					
	Witness fees					
Action arose at:	Depositions					

PROCEEDINGS

Docket Entries

Sep 19 74	Filed complaint and issued summons.
Oct 7-74	Filed summons & return - served William Raymond & Co. refused service
Jan 23.75	Filed ANSWER. (Partenreederei M.S. "Ursula Jacob")
Jan 27.75	Filed Defts. affidavit and notice of motion for order dismissing action. ret. 2/11/75.
Jan 27.75	Filed Defts. Memorandum of law.
1-17-75	[illegible]
Feb 13.75	Filed Default Judgment No. 75,141. Ordered that the pltff. have judgment against the deft. for the liquidated amt. of $59,828 45 togetner with interest on the said sum at 6% from 8/26/73, in the sum of $5,085 41 together with costs & disbursements of $38.36 for a total of $64,952.22. Ward J. Judgment Entered 2-18-75 Clerk. Entered 2-19-75. (mailed notice) (As to only Vaasa Line Oy)
3-7-75	[illegible]
Apr 7.75	Filed Pltff's. affidavit by Theodore Morance in opposition to deft's. motion to dismiss.
Apr 7.75	Filed Pltff's. affidavit by John P. D'Ambrosio in opposition to motion to dismiss and in support of cross motion for summary judgment.
Apr 7.75	Filed Pltff's. memorandum of law.
Apr 8.75	Filed Deft's. (Partenreederei M.S. "Ursula Jacob") reply affidavit in support of motion to dismiss & in opposition to cross-motion for summary judgment.
Apr 9.75	Filed Deft's. (Vaasa Line Oy) affidavit & Order to Show Cause to vacate the default judgment, ret. 4-22-75.....Ward,J.
Apr 9.75	Filed Deft's. (Vaasa Line Oy) memorandum in support of motion to vacate default judgment.
Apr 17.75	Filed Pltff's. affidavit in opposition to Deft's. (Vaasa Line Oy) motion to vacate the default judgment.
Apr 17.75	Filed Pltff's. supplemental affidavit in opposition to Deft's. (Partenreederei) motion and in support of cross-motion for summary judgment.
Apr 17.75	Filed Pltff's. supplemental memorandum of law.
Apr 21.75	Filed Deft's. (Vaasa Line Oy) reply affidavit in support of motion to vacate the default judgment.
Apr 21.75	Filed Deft's. (Vaasa Line Oy) reply memorandum in support of motion to vacate.
Apr 24.75	Filed Pltff's. supplemental affidavit in opposition to Deft's. (Vaasa Line Oy) motion to vacate default judgment.
Apr 24.75	Filed Pltff's. second supplemental memorandum of law.
4-8-75	PRE-TRIAL CONFERENCE HELD BY Ward
05-16-75	Filed Deft's. (Vaasa Line Oy) memorandum of law concerning the Forum Selection Clause in the bill of lading
May 19.75	Filed Pltffs. Memo. on Forum Clause in Bill of Lading.
05-19-75	Filed Memo End. on Deft's. (Vaasa Line Oy) order to show cause filed 4-8-75. Motion to vacate default granted. Settle order on notice.....Ward,J. (mailed notice)
06-04-75	Filed Order that Deft's. Vaasa Line Oy motion to vacate the default judgment is granted.....Ward,J. (mailed notice)
06-09-75	Filed Memo End on Deft's. (Partenreederei) motion to dismiss, filed 1-27-75. Motion granted in accordance with memorandum decision filed herewith.....Ward,J. (mailed notice)
06-09-75	Filed Memorandum Order that Deft. (Partenreederei) motion to dismiss is granted on condition that both Defts. submit to the jurisdiction of the courts of Finland and that Deft. (Partenreederei) deposit a bond in Finland equal to that in this action. Settle Order on notice.....Ward,J. (mailed notice)
06-09-75	Filed Order that the complaint is dismissed as to Deft. (Partenreederei M.S. Ursula Jacob) without prejudice to the commencement of a similar suit in the Courts of Finland and that Deft. deposit a bond in Findland equal to the one in this action.....Ward,J. (mailed notice)

(Continued)

C.110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Ord Judgment
Jul 3.75	Filed Execution on Judgment #75,141 with Marshals ret. Served Vaasa Line by F.W.Hartmann n & Co., & Williams Dimond & Co., on 3/21/75 Judgment XXXXXXXX. Unsatisfied 7-2-75.	
7.75	Filed Pltffs. Notice of Appeal from an order vacating a default judgment dtd. 6/4/75. (mailed notice)	

NOTICE OF MOTION (Filed January 25, 1975) 4a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KOOPERATIVA FORBUNDET, STOCKHOLM

Plaintiff,

-against-

74 Civ. 4076
Judge Ward

VAASA LINE CY, PARTENREEDEREI M.S. "URSULA JACOB" and the SS URSULA JACOB, her engines, her boilers, etc.,

Defendants.

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Michael J. Carcich, duly sworn to the 24th day of January, 1975 and upon all the pleadings and proceedings heretofore had herein in this action, the undersigned will move this Court pursuant to Rule 12(b) of the Federal Rules of Civil Procedure at the Courthouse, Foley Square, New York, New York on the 11th day of February, 1975, at 2:15 o'clock in the afternoon, or as soon thereafter as counsel can be heard, for an order dismissing the action sought to be maintained herein on the ground of forum non conveniens, and for such other and further belief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that answering affidavits, if any, must be served upon the undersigned at least three days before the return date herein.

DATED: New York, New York
January 24, 1975

CICHANOWICZ & CALLAN

By: Donald B. Allen
A Member of the Firm
Attorneys for Defendant
80 Broad Street
New York, New York 10004

TO: JOHN P. D'AMBROSIO
Attorney for Plaintiff
The Honeywell Center
570 Taxter Road
Elmsford, New York 10523

AFFIDAVIT OF MICHAEL J. CARCICH IN SUPPORT OF MOTION (Filed January 25, 1975) 6a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KOOPERATIVA FORBUNDET, STOCKHOLM :

Plaintiff, :

-against- : 74 Civ. 4076

VAASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB" and the SS URSULA JACOB, her engines, her boilers, etc., : JUDGE WARD

AFFIDAVIT

Defendants. :

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MICHAEL J. CARCICH, being duly sworn deposes and says:

I am associated with the firm of CICHANOWICZ & CALLAN, attorneys for the defendant, PARTENREEDEREI M.S. "URSULA JACOB" and am familiar with the pleadings and proceedings heretofore had in this matter. I submit this affidavit in support of a motion to dismiss the complaint on the grounds of forum non conveniens.

This cargo damage action was instituted by the filing of a complaint on September 17, 1974. Defendant, PARTENREEDEREI M.S. "URSULA JACOB" is the owner of the named vessel, and served its answer on January 22, 1975.

We submit that, in the interests of justice and in the sound discretion of the Court, this action should be dismissed on the grounds of forum non conveniens for the following reasons:

1. Plaintiff is a foreign corporation with no

office or place of business in the Southern District of NEW YORK.

2. The defendant, PARTENREEDEREI M.S. "URSULA JACOB" is a West German corporation and conducts its business in West Germany, with no office or place of business in the Southern District of New York; the SS URSULA JACOB is registered under the West Germany flag.

3. Co-defendant, VAASA LINE OY, is a Swedish corporation .

4. This cargo damage action concerns shipments which originated in Costa Rica, and which were discharged in Stockholm, Swedem. The ship never came to the United States on the voyage in suit.

5. Securing testimony and documents with respect to the merits of this case will be much more difficult in New York than they would be if the case were brought in either the country of loading, the country of discharge, or any other country which had at least some connection with this case.

6. The contract of carriage with respect to this case, to which defendant PARTENREEDEREI M.S. "URSULA JACOB" is not a party, but which would govern the rights

between plaintiffs and VAASA LINE OY , clearly provides at Clause 26 thereof:

> "26. JURISDICTION. Any claim against the carrier arising under this Bill of Lading shall be decided at the principle place of business of the Carrier in accordance with the law of that place to which the carrier and the Merchant hereby submit themselves."

7. Upon information and belief defendant, VAASA LINE OY's principle place of business is in Helsinki, Finland.

A review of the pleadings and documentation produced thus far in this lawsuit, indicates that the plaintiff has no contacts with the Southern District of New York or any other American jurisdiction. On the contrary, plaintiff in its complaint identifies itself as a Swedish corporation and does not allege that it has a place of business within this district. Furthermore, in its complaint it identifies defendant, PARTENREEDEREI M.S. "URSULA JACOB", as a West German corporation and does not allege that it has a place of business within this district, or that it is doing business here.

Additionally, plaintiff's contract of carriage with defendant VAASA LINE OY, a Finnish corporation, to which defendant PARTENREEDEREI M.S. "URSULA JACOB" is not a party, provides for settlement of disputes between the parties in Helsinki.

In summary, the plaintiff, a Swedish corporation, has received goods shipped from Costa Rica on board a West German ship, operated by a Finnish carrier, at a Swedish port. The Swedish consignee has contracted with the Finnish carrier to settle all disputes concerning the contract of carriage in Helsinki, and under Finnish Law. There are no American citizens involved in this action, and there are no contacts with this district, or the United States.

WHEREFORE, deponent prays for the entry of an order dismissing the complaint herein on the basis of forum non conveniens, but without prejudice to the commencement of a similar suit in another jurisdiction, and upon condition that defendants waive any time bar defense not already available in the present action.

Michael J. Carcich

Michael J. Carcich

Sworn to before me this 24th
day of January, 1975.

Nicholas Mulcahy

NICHOLAS ... ork
Notary Public, State ...
No. 41-2473126
Qualified in Queens County
Commission Expires March 30, 1976

10a

DEFAULT JUDGMENT (Filed February 13, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT FILED FEB 13 1975 S. D. OF N.Y.

KOOPERATIVA FORBUNDET, STOCKHOLM,

Plaintiff,

-against-

74 Civ. 4076 RJW

VAASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB" and the SS URSULA JACOB, her engines, her boilers, etc.

Default

JUDGMENT NO. 75,141

Defendant.

This action having been commenced by the filing of a Complaint and the issuance of a Summons on September 19, 1974 and a copy of the said Summons and Complaint having been duly served on the abovenamed defendants, VAASA LINE OY, and PARTENREEDEREI M.S. "URSULA JACOB" pursuant to the provisions of Federal Rules of Civil Procedure 4(i) by registered mail, return receipt requested, and the said Summons and Complaint having been also duly served on the abovenamed defendant, VAASA LINE OY, by deputy U.S. Marshal on Sept. 17, 1974 by delivery to said Defendant's agent in New York City, and the said Summons with proof of service having been filed in the office of the Clerk of this Court on Oct. 7, 1974 and the Defendant PARTENREEDEREI M.S. URSULA JACOB having filed its answer herein on Jan. 23 1975 and the defendant VAASA LINE OY, not having appeared, answered or otherwise moved with respect to the complaint herein, and the time for the Defendant, VAASA LINE OY, to appear, answer or otherwise move having expired, and there being no just reason for delay of entry of this judgment, it is

Ordered, Adjudged and Decreed: That the Plaintff, KOOPERATIVA FORBUNDET, STOCKHOLM, have judgment against the Defendant, VAASA LINE OY, for the liquidated amount of $59,828.45 together with interest on the said sum at 6% from August 26, 1973, in the sum of $5,085.41 together with costs and disbursements of $38.36 for a total of $64,952.22.

Dated: New York, New York
February 7th 1974

Robert J. Ward
U.S.D.J.

Judgment Entered: — 2-18-'75

Raymond F. Burghardt
CLERK

AFFIDAVIT OF THEODORE MORANCE IN OPPOSITION TO MOTION (Filed April 7, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KOOPERATIVA FORBUNDET, STOCKHOLM Plaintiff - against - VAASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB" and the SS URSULA JACOB, her engines, her boilers, etc. Defendants	74 Civ. 4076 Judge R. J. Ward AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

THEODORE MORANCE, being duly sworn, deposes and says:

I am familiar with this lawsuit, have discussed it with Plaintiff's counsel, and make this Affidavit in Opposition to the motion herein.

Kooperativa Forbundet, the Plaintiff in this case is the central organization of the Swedish consumer cooperative movement. It is engaged in the production of diverse goods, wares and food stuffs including coffee. In addition to its production activities, it wholesales and retails its goods and runs an extensive retail trade network.

Plaintiff's head office in the United States is located at 6 Corporate Park Drive, White Plains, N.Y. in the Southern District of New York. In addition, it has an office in Chicago, Illinois.

The Plaintiff's wholly-owned subsidiary, Products-From-Sweden, Inc. is also located at 6 Corporate Park Drive, White Plains, N.Y.

in the Southern District of New York. Products-From-Sweden, Inc. is a New York corporation.

Both the Plaintiff and its subsidiary, Products-From-Sweden, Inc. have had offices in New York in the Southern District of New York since 1936. Until 1973 they were located in New York City.

The Plaintiff has been, since 1986 and is now actively engaged in purchasing, selling and marketing its goods at its New York office.

I am Secretary-Treasurer of Products-From-Sweden, Inc. and the New York Office Manager of the Plaintiff herein and have been for 29 years. Last year Plaintiff's net sales in the United States made through its office in White Plains, N.Y. in the Southern District of New York amounted to approximately five million dollars.

Sworn to before me this
4th day of April, 1975

Theodore Morance

Notary Public

ie undersigned, am an attorney admitted to practice in the courts of New York State, and

☐ certify that the annexed
orney's
fication has been compared by me with the original and found to be a true and complete copy thereof.

☐ say that: I am the attorney of record, or of counsel with the attorney(s) of record, for
. I have read the annexed
orney's
fication know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on
by
rmation information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following:

The reason I make this affirmation instead of is

firm that the foregoing statements are true under penalties of perjury.
ed:

.....
(Print signer's name below signature)

TE OF NEW YORK, COUNTY OF ss:

being sworn says: I am

☐ in the action herein; I have read the annexed
vidual know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on
fication information and belief, and as to those matters I believe them to be true.

☐ the of
orate a corporation, one of the parties to the action; I have read the annexed
fication know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on
information and belief, and as to those matters I believe them to be true.
belief, as to those matters therein not stated upon knowledge, is based upon the following:

n to before me on , 19

.....

.....
(Print signer's name below signature)

TE OF NEW YORK, COUNTY OF Westchester ss:

Myrna Ockene
nd reside at White Plains, N.Y. being sworn says: I am not a party to the action, am over 18 years of

On April 4 , 19 75 , I served a true copy of the annexed Affidavit in Opposition
in the following manner:

☐ by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service
vice within the State of New York, addressed to the last known address of the addressee(s) as indicated below:
Mail
CICHANOWICZ & CALLAN, 80 Broad St., N.Y., N.Y.

☐ by delivering the same personally to the persons and at the addresses indicated below:
onal
ice

OHN P. D'AMBROSIO
Public, State of New York
No. 60-7[illegible]
ed in Westchester County
o filed in New York County
Expires March 30, 1976

to before me on April 4 , 19 75

.....

.....
(Print signer's name below signature)
MYRNA OCKENE

AFFIDAVIT OF JOHN P. D'AMBROSIO IN OPPOSITION AND IN SUPPORT OF CROSS-MOTION (Filed April 7, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KOOPERATIVA FORBUNDET, STOCKHOLM, Plaintiff, -against- VASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB" and the SS URSULA JACOB, her engines, her boilers, etc. Defendants.	74 Civ. 4076 Judge R. J. Ward AFFIDAVIT IN OPPOSITION AND IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
)SS:
COUNTY OF WESTCHESTER)

JOHN P. D'AMBROSIO, being duly sworn deposes and says:

I am attorney for the plaintiff herein and am fully familiar with all of the facts in this case and I make this affidavit in opposition to the motion to dismiss the complaint. In light of the posture of this case and the facts to be related and the documents submitted I ask that it be read also as an affidavit in support of plaintiff's motion for summary judgment herein.

In early June, 1973 the plaintiff bought 5,000 bags of coffee from Anderson, Clayton & Company, S.A. Anderson Clayton is a merchant engaged in the import of coffee and other commodities from South and Central America to the U.S. and Europe. Its American coffee division is located at 127 John Street, New York, New York, in the Southern District

of New York. Anderson Clayton filled its order for the 5,000 bags by arranging for their shipment by its supplier, Cia. Continental S.A., in Costa Rica. In August, 1973, Continental shipped the 5,000 bags to the plaintiff in Stockholm. The coffee was loaded aboard the vessel URSULA JACOB, sued herein in rem, at Puntarenes, Costa Rica, at which time defendants, Vaasa Line Oy and Partenreederei, M.S. URSULA JACOB issued their bills of lading, numbers 1, 2 and 3, (attached hereto as plaintiff's Exhibits 1, 2 and 3). Bills of lading 1 and 2 covered 2,000 bags of coffee apiece and bill of lading #3, 1,000 bags. The bills of lading were clean and were certified "on board" by the master who also signed the bills of lading.

The shipper was Continental. Upon ultimate arrival at Stockholm the coffee was found severely damaged by water and some bags were slack. The coffee was surveyed at Stockholm on October 12, 1973 by surveyors representing both the plaintiff and defendants, having arrived there on October 7, 1973. At that time 125 bags out of bill of lading #1, 19 bags out of bill of lading #2 and 985 bags out of bill of lading #3 were found spotted with contents moldy. In addition, several bags were slack. The claim as ultimately formulated amounted to $59,828.45 as indicated on the attached Exhibit 4.

Payment to the shipper, Continental, was made as follows: Continental then had and still has its bank account in New York. Continental mailed the bills of lading and commercial invoices to Anderson Clayton & Co. at New York and upon their receipt Anderson

Clayton arranged a remittance of funds to the credit of Continental at its New York bank. The documents were then forwarded to the plaintiff in Stockholm to be exchanged for the coffee.

The defendant, Vaasa Line is a Finnish corporation which runs a regular liner service to the U.S. Its general agent, Williams, Dimond & Co. has an office at 17 Battery Place, New York City in the Southern District of New York. The vessel, URSULA JACOB, was chartered to Vaasa Line at the time of the movement involved in this case. Vaasa Line ran a regular liner service to the U.S. at that time. I have ascertained that between March, 1973 and September, 1974 the URSULA JACOB made regular calls at U.S. West Coast ports, British Columbia and Honolulu.

As is apparent from the name of the defendant, Partenreederei M.S. URSULA JACOB, it would appear that that defendant was a "single asset" corporation or partnership whose sole asset was the URSULA JACOB.

In May and June, 1974, after receipt of all documents in my office, a claim was formulated and presented to the defendant, Vaasa Line by letter directed to its agent Williams, Dimond & Co. and to the defendant, Partenreederei and the ship by transmittal of the same claim to the vessel's P & I Club's representative in New York, Lamorte, Burns & Co., Inc., 1 World Trade Center, New York, New York. Both claims were acknowledged.

At the same time I took steps, which, in the light of current events and the facts as will hereinafter appear, were eminently sensible; that is, I undertook the arrest of the vessel while she was in California

in June 1974. To forestall the arrest of the vessel at that time, the defendant, Partenreederei, the moving party herein issued through its underwriter, the Steamship Mutual Underwriting Association Limited, a letter of undertaking attached hereto as Exhibit 5 in which Lamorte, Burns & Co., Inc., in this district, as attorney in fact for the said underwriter agreed to file an appearance on behalf of the owner, irrespective of the vessel not being in the jurisdiction at the time of the institution of suit without raising any question as to her absence from the jurisdiction, and to pay any decree entered or any lesser amount decreed by the Court or settled between the parties all in consideration of my not arresting the vessel or attaching any funds of the owner, Partenreederei.

A complaint was filed in this Court on September 19, 1974 in this matter. Service was effected on the defendant, Partenreederei, under Federal Rules of Civil Procedure 4I and personally on the defendant, Vaasa Line Oy by delivery of the summons and complaint to its agent in New York.

Nothing further was heard from the defendant Vaasa Line although I made several attempts to prompt some activity by writing to their agent in California and to it directly in Helsinki. There were discussions from time to time on behalf of the vessel and its owner through the office of Lamorte, Burns & Co., Inc.

It was only after the pre-trial conference called by the Court on January 17, 1975 that the defendant, Partenreederei, answered and made this motion. A default judgment was entered pursuant to the

order of this Court against the defendant, Vaasa Line on February 7, 1975 for $64,952.22, it having ignored the order of this Court. Execution on that judgment is outstanding in the hands of the U.S. Marshal.

My conversations with the office of Lamorte, Burns and Co., Inc. led me to understand that the plaintiff had a settlement of $30,000.00 and I so reported to the plaintiff. The understanding was shared by the office of Cichanowicz & Callan, as will apear in their letter of February 5, 1975 to this Court. As of this time no money has been paid.

As will appear from the affidavit of Theodore Morance in opposition to this motion, the plaintiff, Kooperativa Forbundet, Stockholm is the central organization of the Swedish consumer cooperative movement. It is an amalgam of various industries and trades in Sweden including soft and hard goods, food products, electrical equipment, pulp and paper, household goods and food stuffs. It has been actively engaged in business in the Southern District of New York for twenty-nine years. Between 1936 and 1973 it was located in New York City and since 1973 has been located in White Plains, New York. In addition to having an active sales office in White Plains and prior thereto in New York City where it employs a large staff, it is the sole owner of a subsidiary company, Products-From-Sweden, Inc. likewise located in the Southern District of New York for twenty-nine years and since 1973 at the White Plains address. The subsidiary is the purchasing and marketing arm for the plaintiff and is in fact a New York corporation. Plaintiff's sales in the U.S. placed through the New York office amounted last year to approximately five million dollars.

The vessel, sued herein in rem, no longer exists. The URSULA JACOB was sold, as nearly as I can determine, sometime in the fall of 1974. I have been unable to ascertain its current whereabouts or the facts of its current ownership. I assume, that in view of the fact that it was the single asset of the defendant, Partenreederei that that defendant is likewise not in existence at this time.

In the light of all of these facts it should become quite apparent to this Court that the Defendant's intentions on this motion are not at all as crystal clear as it purports them in its lawyer's affidavit or memorandum.

It can find little solace in its lawyer's litany or "reasons" in support of the motion. By and large the list is wrong in what it does set forth and speaks volumes in what it fails to set forth. Thus, the affidavit is wrong when it says that the plaintiff is a foreign corporation with no office or place of business in the Southern District of New York. Plaintiff has had an office in the Southern District of New York for twenty-nine years and last year did about five million dollars worth of business in the Southern District of New York. Its wholly owned subsidiary whose officers and directors are in the Southern District of New York is a corporation organized and existing under and by virtue of the laws of the State of New York. It is wrong in stating that the defendant, Partenreederei has no office or place of business in the Southern District of New York. It has underwriting representatives in the Southern District of New York (see Lamorte, Burns' letter, plaintiff's Exhibit 5) and presumably an insurance policy subject to

attachment here. It undertook to issue a guarantee in the Southern District of New York. It undertook to forestall the arrest of the URSULA JACOB. It agreed to appear in this action without raising any question as to the vessel's absence from this jurisdiction. It agreed to pay any decree or settlement arrived at in this case. It is wrong when it states that Vaasa Line is a Swedish corporation. It is wrong when it states that the ship never came in the U.S. on the voyage in suit. The vessel was at Los Angeles on August 14, 1973. It is wrong in suggesting that securing testimony and documents "will be much more difficult in New York" than elsewhere. At this writing this ship has been sold. Lord only knows where the crew is. The defendant, Partenreederei is probably nonexistent. The documents are all before this Court. Payment for the goods was effected in New York. The supplier had its principal place of business and still has in New York. The shipper had its bank account in New York. The plaintiff is doing business in New York. The defendant, Vaasa Line is doing business in New York, and the ship has guaranteed in New York against its arrest. It is wrong when it says that Partenreederei is not a party to the contract of carriage. The bills of lading were signed by the master, and in fact, he certified that the goods were on board the ship. Moreover, the DEMISE CLAUSE of the bills of lading (paragraph 22, plaintiff's Exhibits 1, 2 and 3.) specifically provides "... this bill of lading shall take effect only as a contract with the Owner or demise charterer as the case may be ...". And it is manifestly wrong, as I have shown, in stating that there are no contacts with this district or the U.S.

I find it curious that defendant hasn't pointed out these missing facts to this Court. Also, it has failed to point out the interesting bill of lading provisions which a) couch the per-package limitation in American terms as "not exceeding $500.00 lawful money of the United States of America..." (plaintiff's Exhibit 1, paragraph 5) and b) specifically apply the U.S. Carriage of Goods by Sea Act (plaintiff's Exhibit 1, paragraph 2).

The defendant has missed the forest for the trees. I submit that this Court should not do likewise. I suggest that if one were to stand back and view this entire case from an overlook, one would see a vastly different picture than that painted by the defendant. What appears out of the mist of misdirection raised by the defendant is actually a situation where the plaintiff took eminently sensible steps in instituting this action in the Southern District of New York; that if it had failed to do so it would now be without a proper remedy against all the parties involved; that if this case is dismissed, it will be without a proper remedy against all the parties involved.

This Court should not lose sight of the fact that this case is in rem as it applies to the vessel and that the vessel is the real culprit. Nor should this Court lose sight of the fact that the other defendant with assets, Vaasa Line Oy has failed after repeated admonitions to appear or answer this case and that a judgment has been taken against it. This Court must recognize that the law in this case is that the Court must begin with the assumption that it will exercise jurisdiction unless it is established by the defendant that an injustice would follow

thereby. The burden is on the defendant to prove that it will be unjust to continue to retain jurisdiction. The question is not whether an injustice will result if the Court does not exercise jurisdiction. I submit that the defendant has not sustained that burden, has not even come close to sustaining that burden and has not even suggested any injustice which would follow from the retention of jurisdiction by this Court.

On the other hand a severe injustice would be visited upon this plaintiff were this Court to dismiss this case. It should be clear to this Court how seriously the defendants' view their obligations to the plaintiff. Vaasa Line has defaulted. Partenreederei only appeared and answered when faced with the admonition of this Court to do so, otherwise a judgment would be taken against it. The only other time it was spurred to action was when the arrest of its vessel in the U.S. was threatened.

This is the only forum where all the defendants can be reached at one time and place most conveniently. In fact, it is a "forum of necessity" thrust upon this plaintiff by the exigencies of this case: ignored by the vessel and its owner, plaintiff sought out the vessel and found it at a point and at a place and at a time where all the parties could be brought together. The plaintiff, which has very real connections with New York and does a vast amount of business here, served Vaasa Line here, and obtained an undertaking on the part of the vessel here. This Court should not and cannot take from this plaintiff

the fruits of its hard-earned efforts. There is no evidence that Vaasa Line did business in West Germany or that Partenreederei did business in Finla and I can vouch for the fact that according to my research the vessel never went near either place after the voyage in question. Where it did go was regularly to the U.S. where it and both defendants were properly sued and served with process.

Apparently convinced that saying makes it so, defendant blithely suggests commencement of a similar suit in another jurisdiction. I ask: to what end? No other jurisdiction is conveniently available. Costa Rican law as plaintiff's memorandum will show is decidedly prejudicial. The crew is probably as available here as it is going to be anywhere else in the world. Vaasa Line has already defaulted and hasn't been heard from. Partenreederei probably doesn't exist, and the vessel has been sold. To do so would relegate plaintiff to litigating lawsuits in two widely separate and disparate jurisdictions. To do anything with this lawsuit at this juncture in its present posture would be to undo at great detriment to the plaintiff, a great deal of its effort.

Nor should this Court lose sight of that settlement that was offered and never heard about since. Considering the time at which it was in the offing it would appear to have been dangled as an inducement in order to forestall any <u>further</u> activity on the part of the plaintiff probably pending the sale of the ship. Now that the sale has been accomplished, there does not appear to be a great deal of reason to prosecute the case or talk about the settlement. But the plaintiff, having obtained a ready source of satisfaction of any judgment against the

vessel through the owner's letter of undertaking issued in this district, and having already obtained a judgment against the other defendant which it is now actively pursuing, should not be forestalled any longer.

The Court should also not lose sight of the defendant's obligation on this motion and its position in this lawsuit, both of which have been studiously sidestepped in the affidavit and memorandum in support of this motion.

The defendant's position in this lawsuit and on this motion is to show this Court how inconvenient it is for it to continue the case here and how much more convenient it would be to continue it elsewhere. I submit that this has not been done. This admiralty suit can be brought in this jurisdiction by choice of the plaintiff and its choice should not be lightly disturbed. Almost all of the witnesses and all of the documents are already here and those that are not can be just as readily brought here as anywehre else in the world in this time of swift travel.

Finally, as a basically in rem action against the vessel this Court should clearly see this case as one in which there is no "home" forum. It has come to reside in this District for very good reasons and should not be evicted. Considering the progress that has been made in this case to date by the active prosecution of its rights by the plaintiff, it would in fact create chaos and a serious injustice to do so. This Court, it is respectfully submitted, is charged with preserving the rights

of the parties; and to dismiss this case would hardly preserve plaintiff's rights. Therefore, I respectfully request that the motion be in all respects denied, and plaintiff's cross-motion for summary judgment granted.

JOHN P. D'AMBROSIO

Sworn to before me this 4th
day of April, 1975.

Patricia E. Johansmeyer
Notary Public

PATRICIA E. JOHANSMEYER
Notary Public, State of New York
No. 4522882
Qualified in Westchester County
Term Expires March 30, 1976

PLAINTIFF'S EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

EXHIBIT 1 - BILL OF LADING #1

Shipper:

C.I.A. CONTINENTAL S.A.

B/L Number: 1

Consignee:

TO ORDER

Notify address:

KOOPERATIVA FORBUNDET, STOCKHOLM

VAASA LINE

Service of VAASA LINE OY
HELSINKI 10, FINLAND

* Local vessel: * from:

(Ocean vessel) VOY TO: E "URSULA JACOB" Port of loading: PUNTARENAS, C.R.

BILL OF LADING

Port of discharge	* Final destination (if on-carriage)	Freight payable at	Number of original B/L
HELSINKI	STOCKHOLM - KF PORT	STOCKHOLM	THREE (3)

Marks & Nos.	Number and kind of packages; description of goods	Gross weight	Measurement
CAFE DE COSTA RICA A C C O PC-274 KF 4341 CC STOCKHOLM	2.000 WASHED COSTA RICAN COFFEE. SACKS CROP 72/73 INSURANCE COVERED BY BUYERS FREIGHT TO BE COLLECTED	139.400 KGS 307.321 #	

PARTICULARS FURNISHED BY SHIPPER OF GOODS

FORWARDING AGENTS:
CORMAR S.A. P.O. BOX 292
PUNTARENAS-COSTA RICA

ORIGINAL

It is hereby certified that the goods are on board the ship

K. Kvenda
Agent or Master

* Applicable only when used as a THROUGH B/L

Freight and charges Charged on	Rate	per	Prepaid	Collect
139.400KGS	$67.00	1000K		$9344.22
CONG/SURCH. 10%				934.42
FIND. ADD. $ 5.00		1000K		697.33
C.A.C. 21% S/$10.041.55				2108.73
T.L.C. $2.00		1000K		278.80
Total Freight				$13363.50
Advanced Charges				
Collecting Fee				
Total Charges				

Shipped on board in apparent good order and condition unless otherwise indicated herein the goods, or the containers or packages said to contain the goods herein mentioned, to be carried to the port of discharge, or so near thereto as the vessel may safely get and be always afloat, there to be delivered on payment of the charges thereon and on due performance of all obligations of the Merchant. It is agreed that the custody and carriage of the goods are subject to the terms stated on the back and face hereof, which shall govern the relations, whatsoever they may be, between the Merchant and the Carrier and the ship in every contingency, wheresoever and whensoever occurring.

This Bill of Lading is a receipt only for the number of package shown above. Weight, measurement, marks and numbers, quality, contents and value shown above are furnished by the Merchant and have not been checked and are to be considered unknown, unless expressly acknowledged and agreed to. The signing of this Bill of Lading is not to be considered as such an acknowledgement or agreement. In accepting this Bill of Lading the Merchant agree to be bound by all stipulations, exceptions, terms and conditions of the face and back hereof, whether written, typed, stamped or printed, as fully as if signed by the Merchant, any local custom or privileges to the contrary notwithstanding, and agrees that all agreements or freight engagements for and in connection with the carriage of the goods are superseded by this Bill of Lading.

In witness whereof the Master of the said vessel has signed THREE (3) original Bills of Lading, if not otherwise stated above, one of which being accomplished, the other(s) to be void.

Place and date of issue: PUNTARENAS C.R. AUGUST 26TH 1973

for the master

By K. Kvenda
Agent

VAASA LINE — VAASA LINE OY, HELSINKI 10, FINLAND

1. DEFINITIONS. In this Bill of Lading the word "vessel" shall include any substituted vessel, and any craft, lighter or other means of conveyance owned, chartered or operated by the Carrier; the word "Carrier" shall include the vessel, her owner, operator, master, demise charterer, and if bound hereby, the time charterer; the word "shipper" shall include the person named as such in this Bill of Lading and the person for whose account the goods are shipped; the word "merchant" shall include the shipper, consignee, the holder of this Bill of Lading, the owner of the goods and the person who is entitled to or receives delivery of the goods; the word "goods" shall include containers and other packages said to contain goods and the goods themselves [illegible] and described; the word "charges" shall include [illegible] freight, demurrage, storage, advance charges, general [illegible] salvage obligations or both, and all other expenses [illegible], damages and money obligations whatsoever [illegible] payable by the goods, shipper or consignee, regardless of [illegible] sustained, incurred or paid by the Carrier in the first instance.

2. RESPONSIBILITY. This Bill of Lading shall have effect subject to the provisions of the Hague Rules contained in the International Convention for the Unification of Certain Rules Relating to Bills of Lading dated Brussels August 25, 1924, as enacted in Finland by the Bill of Lading Act of June 8, 1939, unless the Hague Rules are made compulsorily applicable hereto as enacted in the country of shipment or destination, such as the United States Carriage of Goods by Sea Act 1936, The Canadian Water Carriage of Goods Act 1936, and Article 91 of Book II of the Belgian Commercial Code. The provisions of the applicable Hague Rules shall apply (except as may otherwise be specifically provided herein) during [illegible] to have any responsibility by law or otherwise with respect to the goods as carrier, custodian [illegible]

[illegible]

3. EXEMPTIONS AND IMMUNITIES OF ALL SERVANTS, AGENTS AND INDEPENDENT CONTRACTORS. [illegible]

4. STATUTORY EXEMPTIONS, FIRE. [illegible]

5. PACKAGE LIMITATION. [illegible]

6. GENERAL AVERAGE. [illegible]

7. SCOPE OF THE VOYAGE. [illegible]

8. METHODS OF CONVEYANCE. [illegible]

[illegible]

10. STOWAGE OPTIONS. [illegible]

11. SPECIAL CARGO. [illegible]

12. SPECIAL STOWAGE. [illegible]

13. DANGEROUS GOODS. [illegible]

14. COOPERAGE. [illegible]

15. PAYMENT OF FREIGHT, CARRIER'S LIEN FOR CHARGES. [illegible]

16. CURRENCY CLAUSE. [illegible]

17. ANTWERP RETENTION CLAUSE. [illegible]

18. WEIGHING OR MEASURING CARGO ON BOARD VESSEL. [illegible]

19. WAR RISKS CLAUSE. [illegible]

20. PANAMA CANAL AND/OR SUEZ CLAUSE. [illegible]

21. BOTH-TO-BLAME COLLISION CLAUSE. [illegible]

22. DEMISE CLAUSE. [illegible]

23. IRON AND STEEL PRODUCTS. [illegible]

24. TRANSHIPMENT CLAUSE. [illegible]

25. TIME FOR SUIT. [illegible]

26. JURISDICTION. [illegible]

CIA. CONTINENTAL S.A.

to the order of
Kooperativa Forbundet
ANDERSON, CLAYTON & CO., SA.

[illegible signature]

EXHIBIT 2 - BILL OF LADING #2

29a

Shipper

C.I.A. CONTINENTAL S.A.

B/L Number 2

Consignee

TO ORDER

Notify address

KOOPERATIVA FORBUNDET, STOCKHOLM

* Local vessel * from

(Ocean vessel) VOY 10-E Port of loading
"URSULA JACOB" PUNTARENAS C.R.

VAASA LINE

Service of VAASA LINE OY
HELSINKI 10, FINLAND

BILL OF LADING

Port of discharge	* Final destination (if on-carriage)	Freight payable at	Number of original B/L
HELSINKI	STOCKHOLM-KF PORT	STOCKHOLM	THREE (3)

Marks & Nos	Number and kind of packages; description of goods	Gross weight	Measurement
CAFE DE COSTA RICA A C C O PC - 259 KF 4339 CC STOCKHOLM	2.000 SACKS WASHED COSTA RICA COFFEE, CROP 72/73 INSURANCE COVERED BY BUYERS FREIGHT TO BE COLLECTED	139.400 KGS 307.321 #	

PARTICULARS FURNISHED BY SHIPPER OF GOODS

FORWARDING AGENTS:
CORMAR S.A. P.O. BOX 292
PUNTARENAS-COSTA RICA.

* Applicable only when used as a THROUGH B/L

ORIGINAL

It is hereby certified that the goods are on board the ship

K. Ovenda
Agent or Master

Freight and charges Charged on	Rate	per	Prepaid	Collect
139.400K	$67.00	1000K		$9344.22
CONG/SURCH	10%			934.42
FIND. ADD.	$5.00	1000K		697.33
C.A.C.	21%S/$10,041.55			2108.73
T.L.C.	$2.00	1000K		278.80
Total Freight				$13363.50
Advanced Charges				
Collecting Fee				
Total Charges				

Shipped on board in apparent good order and condition unless otherwise indicated herein the goods, or the containers or packages said to contain the goods herein mentioned, to be carried to the port of discharge, or so near thereto as the vessel may safely get and be always afloat, there to be delivered on payment of the charge thereon and on due performance of all obligations of the Merchant. It is agreed that the custody and carriage of the goods are subject to the terms stated on the back and face hereof, which shall govern the relations, whatsoever they may be, between the Merchant and the Carrier and the ship in every contingency, wheresoever and whensoever occurring.

This Bill of Lading is a receipt only for the number of package shown above. Weight, measurement, marks and numbers, quality, contents and value shown above are furnished by the Merchant and have not been checked and are to be considered unknown, unless expressly acknowledged and agreed to. The signing of this Bill of Lading is not to be considered as such an acknowledgement or agreement. In accepting this Bill of Lading the Merchant agrees to be bound by all stipulations, exceptions, terms and conditions of the face and back hereof, whether written, typed, stamped or printed, as fully as if signed by the Merchant, any local custom or privileges to the contrary notwithstanding, and agrees that all agreements or freight engagements for and in connection with the carriage of the goods are superseded by this Bill of Lading.

In witness whereof the Master of the said vessel has signed THREE (3) original Bills of Lading, if not otherwise stated above, one of which being accomplished, the other(s) to be void.

Place and date of issue
PUNTARENAS C.R. AUGUST 26TH 1973

for the master

By K. Ovenda
Agent

30a

VAASA LINE

VAASA LINE OY
HELSINKI 10, FINLAND

1. DEFINITIONS. In this Bill of Lading the word "vessel" shall include any substituted vessel, and any craft, lighter or other means of conveyance owned, chartered or operated by the Carrier; the word "Carrier" shall include the vessel, her owner, operator, master, demise charterer, and if bound hereby, the time charterer; the word "shipper" shall include the person named as such in this Bill of Lading and the person for whose account the goods are shipped; the word "merchant" shall include the shipper, the consignee, the holder of this Bill of Lading, the owner of the goods and the person who is entitled to or receives delivery of the goods; the word "goods" shall include containers said to contain goods and the goods themselves [illegible] and described; the word "charges" shall include freight, demurrage, storage, advance charges, general average and salvage obligations or both, and all other expenses, indemnities, damages and money obligations whatsoever [illegible] payable by the goods, shipper or consignee regardless of whether sustained, incurred or paid by the Carrier in the first instance.

2. RESPONSIBILITY. This Bill of Lading shall have effect subject to the provisions of the Hague Rules contained in the International Convention for the Unification of Certain Rules Relating to Bills of Lading dated Brussels August 25, 1924, as enacted in Finland by the Bill of Lading Act of June 9, 1939, unless the Hague Rules are made compulsorily applicable herein as enacted in the country of shipment or destination, such as the United States Carriage of Goods by Sea Act 1936, the Canadian Water Carriage of Goods Act 1936, and Article 91 of Book 1 of the Belgian Commercial Code. [illegible]

3. EXEMPTIONS AND IMMUNITIES OF ALL SERVANTS, AGENTS AND INDEPENDENT CONTRACTORS. [illegible]

4. STATUTORY EXEMPTIONS: FIRE. [illegible]

5. PACKAGE LIMITATION. [illegible]

6. GENERAL AVERAGE. [illegible]

7. SCOPE OF THE VOYAGE. [illegible]

8. METHODS OF CONVEYANCE. [illegible]

To the order of
Kooperativa Forbundet
ANDERSON, CLAYTON & CO. SA.

9. LOADING, DISCHARGING AND DELIVERY OF GOODS. [illegible]

10. STOWAGE OPTIONS. [illegible]

11. SPECIAL CARGO. [illegible]

12. SPECIAL STOWAGE. [illegible]

13. DANGEROUS GOODS. [illegible]

14. COOPERAGE. [illegible]

15. PAYMENT OF FREIGHT, CARRIER'S LIEN OR CHARGES. [illegible]

16. CURRENCY CLAUSE. [illegible]

17. ANTWERP RECEPTION CLAUSE. [illegible]

18. WEIGHING OR MEASURING CARGO ON BOARD VESSEL. [illegible]

19. WAR RISKS CLAUSE. [illegible]

20. PANAMA CANAL AND/OR SUEZ CLAUSE. [illegible]

21. BOTH-TO-BLAME COLLISION CLAUSE. [illegible]

22. DEMISE CLAUSE. [illegible]

23. IRON AND STEEL PRODUCTS. [illegible]

24. TRANSHIPMENT CLAUSE. [illegible]

25. TIME FOR SUIT. [illegible]

26. [illegible]

EXHIBIT 3 - BILL OF LADING #3

31a

Shipper:

CIA CONTINENTAL S.A.

B/L Number: 3

Consignee:

TO ORDER

Notify address:

IPHO LAUSANNE SA

* Local vessel: * from:

(Ocean vessel): VOY. NO. Port of loading:

"URSULA JACOB" PUNTARENAS C.R.

VAASA LINE

Service of VAASA LINE OY
HELSINKI 10, FINLAND

BILL OF LADING

Port of discharge:	* Final destination (if on-carriage)	Freight payable at:	Number of original Bs/L:
HELSINKI	STOCKHOLM	STOCKHOLM	THREE (3)

PARTICULARS FURNISHED BY SHIPPER OF GOODS

Marks & Nos	Number and kind of packages; description of goods	Gross weight	Measurement
CAFE DE COSTA RICA I S A 4 3 4 2 CC STOCKHOLM	1 000 SACKS WASHED COSTA RICA COFFEE CROP 72/73	69 700 KGS 153.661 A	
	INSURANCE COVERED BY BUYERS FREIGHT TO BE COLLECTED		
FORWARDING AGENTS: CORMAR S.A. P.O.BOX 292 PUNTARENAS-COSTA RICA.			

ORIGINAL

It is hereby certified that
the goods are on board the ship

Agent or Master

* Applicable only when used as a THROUGH B/L

Freight and charges Charged on	Rate	per	Prepaid	Collect
69 700 K	$67.00	1000K		$4669.90
CONG/SURCH. 10%				466.99
FIND.ADD $5.00		1000K		348.50
C.A.C. 2½ S/$5,015.40				125.38
T.L.C. $2.00		1000K		139.40
Total Freight				$5678.17
Advanced Charges				
Collecting Fee				
Total Charges				

Shipped on board in apparent good order and condition unless otherwise indicated herein the goods, or the containers or packages said to contain the goods herein mentioned, to be carried to the port of discharge, or so near thereto as the vessel may safely get and be always afloat, there to be delivered on payment of the charges thereon and on due performance of all obligations of the Merchant. It is agreed that the custody and carriage of the goods are subject to the terms stated on the back and face hereof, which shall govern the relations, whatsoever they may be, between the Merchant and the Carrier and the ship in every contingency, wheresoever and whensoever occurring.

This Bill of Lading is a receipt only for the number of package shown above. Weight, measurement, marks and numbers, quality, contents and value shown above are furnished by the Merchant and have not been checked and are to be considered unknown, unless expressly acknowledged and agreed to. The signing of this Bill of Lading is not to be considered as such an acknowledgement or agreement. In accepting this Bill of Lading the Merchant agree to be bound by all stipulations, exceptions, terms and conditions of the face and back hereof, whether written, typed, stamped or printed, as fully as if signed by the Merchant, any local custom or privileges to the contrary notwithstanding, and agrees that all agreements or freight engagements for and in connection with the carriage of the goods are superseded by this Bill of Lading.

In witness whereof the Master of the said vessel has signed THREE (3) original Bills of Lading, if not otherwise stated above, one of which being accomplished, the other(s) to be void.

Place and date of issue:

PUNTARENAS C.R. AUGUST 25th 1973

for the master:

By

Agent

VAASA LINE

VAASA LINE OY
HELSINKI 10, FINLAND

CIA. CONTINENTAL S.A.

1\. DEFINITIONS. In this Bill of Lading the word "vessel" shall include any substituted vessel, and any craft, lighter or other means of conveyance owned, chartered or operated by the Carrier; the word "Carrier" shall include the vessel, her owner, operator, master, demise charterer, and if bound hereby, the time charterer; the word "shipper" shall include the person named as such in this Bill of Lading and the person for whose account the goods are shipped; the word "merchant" shall include the shipper, the consignee, the holder of this Bill of Lading, the owner of the goods and the person who is entitled to or receives delivery of the goods; the word "goods" shall include containers and other packages used to contain goods and the goods themselves [illegible] and described; the word "charges" shall include [illegible] freight, demurrage, storage, advance charges, general average [illegible] obligations or both, and all other expenses, costs [illegible] damages and money obligations whatsoever incurred [illegible] by the goods, shipper or consignee, regardless of whether [illegible], incurred or paid by the Carrier in the first instance.

2\. RESPONSIBILITY. This Bill of Lading shall have effect subject to the provisions of the Hague Rules contained in the International Convention for the Unification of Certain Rules Relating to Bills of Lading dated Brussels August 25, 1924, as enacted in Finland by the Bill of Lading Act of June 8, 1939, unless the Hague Rules are made compulsorily applicable hereto as enacted in the country of shipment or destination, such as the United States Carriage of Goods by Sea Act 1936, The Canadian Water Carriage of Goods Act 1936, and Article 91 of Book II of the Belgian Commercial Code. The provisions of the applicable Hague Rules shall apply (except as may otherwise be specifically provided herein) during any time that the Carrier is adjudged to have any responsibility by law or otherwise with respect to the goods, as carrier, custodian, bailee or in any other capacity. Nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Rules.

The Carrier shall not be liable in any capacity whatsoever for any delay, non-delivery or mis-delivery, loss of or damage to the goods occurring while the goods are not in the actual custody of the Carrier. The Carrier shall not be liable for any direct or indirect loss or damage caused by or arising from delay.

If the Merchant has the option to choose port of discharge, such option must be declared to the vessel's agents at the first of the ports of discharge mentioned in this Bill of Lading not later than 48 hours before the vessel's arrival there. Failing such declaration the Carrier shall be at liberty to discharge at any of the aforesaid ports and such discharge shall in all respects be considered a valid and complete fulfilment of this contract of carriage. Any option must be for the total quantity of goods under this Bill of Lading.

3\. EXEMPTIONS AND IMMUNITIES OF ALL SERVANTS, AGENTS AND INDEPENDENT CONTRACTORS. It is hereby expressly agreed that no servant or agent of the Carrier, or any independent contractor from time to time employed by the Carrier (including stevedores), shall in any circumstances whatsoever be under any liability whatsoever to the Merchant as carrier, bailee or otherwise howsoever, in contract or in tort, for any loss, damage or delay of whatsoever kind, and, but without prejudice to the generality of the foregoing provisions of this clause, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defense and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder or otherwise by law shall also be available and shall extend to protect every such servant, agent or independent contractor, and in contracting for the foregoing provisions of this clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or agents or employed by him as independent contractors as aforesaid from time to time.

4\. STATUTORY EXEMPTIONS. FIRE. The shipment under this Bill of Lading is also subject to all the provisions of sections 4281, 4282, 4283, 4284, 4285 and 4286 of the Revised Statutes of the United States and acts amendatory thereof. Nothing contained in this Bill of Lading shall operate to limit or deprive the Carrier of any statutory protection or exemption of limitation of liability authorized by any applicable laws, statutes or regulations of any countries. Neither the Carrier nor any corporation owned by, subsidiary to, or associated or affiliated with the Carrier shall be liable to answer for or make good any loss or damage to the goods occurring at any time, and even though before loading on or after discharge from the vessel by reason of or by means of any fire whatsoever, unless such fire shall be caused by its design or neglect.

5\. PACKAGE LIMITATION. Unless the Merchant shall declare and have written in this Bill of Lading the value of the goods, and shall pay or agree to pay freight thereon at the ad valorem rate, he elects to ship under the regular (lower) rate, on which basis the freight is adjusted, and agrees that for the purpose of computing any liability of the Carrier for loss or damage, whether total or partial, the value of the goods shall be their actual invoice value plus freight, not exceeding $ 500 lawful money of the United States of America per package or per customary freight unit. Any liability of the Carrier for partial loss or damage shall be adjusted pro rata on the basis of such agreed or declared value as the case may be.

6\. GENERAL AVERAGE. General Average shall be payable according to the York/Antwerp Rules 1950, and shall be adjusted at any port or place selected by the Carrier, but where the adjustment is made in accordance with the law and practice of the United States of America the following clause shall apply:

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the Carrier is not responsible, by statute, contract or otherwise, the goods and the Merchant shall contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

If a salvaging vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods and the Merchant to the Carrier before delivery."

With respect to goods to be discharged at a Netherlands port Article 700 Commercial Code of the Netherlands is expressly waived.

7\. SCOPE OF THE VOYAGE. The contract is for liner service and the voyage herein undertaken shall include usual or customary or advertised ports of call whether named in this contract or not, also ports in or out of the advertised, geographical, usual or ordinary route or order, even though in proceeding thereto the vessel may sail beyond the port of discharge or in a direction contrary thereto, or depart from the direct or customary route. The vessel may call at any port for the purpose of the current voyage or of a prior or subsequent voyage. The vessel may omit calling at any port or ports whether scheduled or not, and may call at the same port more than once, may, either with or without the goods on board and before or after proceeding towards the port of discharge, adjust compasses, dry-dock, go on ways or to repair yards, shift berths, undergo degaussing, wiping or similar measures, take fuel or stores, land stowaways, remain in port, sail without pilots, tow and be towed, and save or attempt to save life or property, and all of the foregoing are included in the contract voyage.

8\. METHODS OF CONVEYANCE. If because of war, hostilities, insurrection, civil commotion, blockade, interdict, or any other action or regulation of any government or people, condition of the sea or weather including ice difficulties, obstruction of navigation, epidemic disease, quarantine, strikes, lockouts, labor rules, stoppage or shortage or restraint of labor or labor troubles of Carrier's employees or others, whether partial or general, congestion at port or wharves, lack of loading or discharging facilities or any other conditions, whether or not like in nature to the foregoing and whether actual or reported, existing or anticipated at or near or on the way to port of shipment or port of discharge, the Carrier or Master shall deem it impossible, imprudent or (having regard to despatch of vessel and other cargo as well as goods named hereon) inadvisable to proceed to such port or to load or discharge the goods there, or that entry therein or communication therewith or attempt to work cargo there may render the vessel subject to quarantine or to strikes or labor troubles there or at any subsequent port, then and in any of such events the vessel may proceed by any route, which the Master or the Carrier may deem in the interest of safety or caution, and at option of the Carrier or Master:

(1) Vessel may omit to call or to load the goods at port of shipment, or having loaded may discharge them there, and the Carrier may (a) store them at said port, or (b) arrange for forwarding them to or toward the port of destination.

(2) Vessel may omit to call at or to discharge the goods at port of discharge and the Carrier may (a) retain the goods on board, return them to port of shipment and there discharge and store them, or (b) deliver them on vessel's next call at port of discharge, or (c) store them at nearest practicable place to port of discharge or at the port nearest thereto at which the vessel calls, or at such other port or place as the Master or the Carrier may deem safe or advisable or (d) land and store them and/or arrange for forwarding from any place and by any route to or toward the port of destination. The storage provided for in this clause may be in lighters or craft or on wharf or shore and the [illegible] may be by any other vessel as elsewhere in this contract [illegible] by any other means of conveyance. Any such storage [illegible] forwarding shall be arranged by the Carrier in the capacity of [illegible] agent and at Merchant's cost and risk, and shall constitute [illegible] delivery under this contract, provided notice thereon be mailed [illegible] consignee (or other person designated hereon if named hereon [illegible] given hereon), otherwise to the Shipper, and the Carrier shall retain its lien for all freight, charges and expenses.

If vessel be prevented by quarantine from discharging the goods or any part thereof at the usual or stipulated place, the Carrier may forthwith and without notice discharge the same into any depot or lazaretto, and such discharge shall be deemed a final delivery under this contract, but the Carrier shall retain its lien for all freight, charges and expenses, including any incurred on account of such quarantine.

9\. LOADING, DISCHARGING AND DELIVERY OF GOODS.

(1) Loading and discharging of the goods may commence without notice to the Merchant. Landing, storing and delivery shall be at the risk and expense of the Merchant.

(2) The Merchant shall tender the goods at the port of loading when the vessel is ready to load and as fast as the vessel can receive them, and, if required by the Carrier, also outside of ordinary working hours, notwithstanding any custom of the port to the contrary. Otherwise the Carrier shall be relieved of any obligation to load the goods and the vessel may leave the port without further notice; deadfreight shall be paid by the Merchant if the goods are not timely tendered for loading.

(3) The Carrier is not and shall not be required to deliver the goods at the port of delivery at any particular time or to meet any particular market or in time for any particular use.

(4) The Carrier may discharge the goods at or onto any wharf, craft or place that the Carrier may select, and such discharge shall constitute complete delivery and performance under the contract, and the Carrier shall not be liable for any loss of or damage to the goods which may occur thereafter. The Merchant shall take delivery of the goods as fast as the vessel can deliver, and, if required by the Carrier, also outside of ordinary working hours, notwithstanding any custom of the port to the contrary.

(5) The Merchant shall bear all overtime charges in connection with tendering and taking delivery of the goods as provided above.

(6) If the goods are not applied for within a reasonable time, the goods may in the Carrier's option and without notice to the Merchant be sent to store or warehouse at the risk and expense of the Merchant, or may be sold by the Carrier privately or by auction, but reserving the Carrier's lien on the goods for all charges incurred by or due the Carrier.

(7) The Merchant shall accept his reasonable proportion of unidentified loose goods.

(8) The Carrier is entitled to land and receive the goods or to appoint a person or a corporation for the landing and reception of the goods. Whether appointed by the Carrier or not, anybody so acting is the Merchant's representative and the Merchant shall pay current charges whether delivery is taken overside or on quay.

(9) Notwithstanding any custom of the port to the contrary, lighterage whether before loading or in connection with transshipment or discharge, whether before loading or in connection with transshipment or discharge, is at the risk and expense of the Merchant, even though arranged for by the Carrier or his agents.

(10) Should the Carrier find the goods to be in such condition that he considers it advisable to discharge, tranship, return, remove or destroy them, then he shall be entitled to do so at any port or place. In such case the Merchant shall bear the risk of any loss of or damage to the goods, and the Merchant and the goods shall be liable for any charges incurred by the Carrier.

(11) If delay is caused to the vessel for any reason whatsoever, the shipper shall pay demurrage at the rate of U.S. $ 0.35 per gross register ton per day or pro rata for portion of a day. Time to count from vessel's arrival whether in berth or not.

10\. STOWAGE OPTIONS. Goods may be stowed in poop, forecastle, deckhouse, shelterdeck, passenger space, or in any other covered in space commonly used in the trade for the carriage of goods and, when so stowed, shall be deemed for all purposes to be stowed under deck. Goods may be stowed by the Carrier or his agents or servants in containers and containers, whether the goods therein be stowed by the Carrier or by the Merchant, may be carried on or under deck without notice to the Merchant and, if they are so carried, the Hague Rules as incorporated herein shall be applicable notwithstanding carriage on or under deck and the goods and/or containers shall contribute in general average whether carried on or under deck.

11\. SPECIAL CARGO. Living animals and cargo carried on deck and stated herein to be so carried are carried at Merchant's risk and the Carrier shall not be liable for any loss or damage thereto arising or resulting from any cause whatsoever. The vessel may carry contraband, explosives, munitions, warlike stores and hazardous cargo.

The Carrier's acknowledgement of unboxed motor vehicles in apparent good order and condition contains no admission that the goods are free from minor defects, hairline scratches, smaller dents and missing parts and tools. The Carrier accepts no responsibility whatsoever for any such minor damage nor for unspecified tools or apparatus nor for any goods of whatsoever kind contained in the motor vehicles.

12\. SPECIAL STOWAGE. Special heated, cooled, ventilated or insulated stowage will not be furnished unless contracted for at an increased freight rate. A surveyor's certificate with respect to heated, cooled, ventilated or insulated space issued prior to shipment shall be deemed to be conclusive evidence that the Carrier has exercised due diligence to make the vessel, her equipment and machinery at the time of loading and at the commencement of the voyage seaworthy in respect to such space. The Carrier shall not be liable in any respect whatsoever if heat or refrigeration or special cooling facilities shall not be furnished during loading or discharging or any part of the time that the goods are upon the wharf, craft or other loading or discharging place.

13\. DANGEROUS GOODS. The Merchant shall be liable for any loss or damage to vessel, wharves, craft, lighters or cargo caused by inflammable, explosive or dangerous goods, shipped without a special agreement and without full disclosure in writing of their nature, whether such Merchant be principal or agent, and whether such Merchant be ignorant of the dangerous nature of such goods, and such goods may be thrown overboard or destroyed at any time without compensation. Such goods and other whose nature in [illegible] makes it reasonable may be carried on deck at the risk of the Merchant.

14\. COOPERAGE. All expense for cooperage, reconditioning and gathering of loose cargo and contents of packages shall be paid by the Merchant and shall constitute a lien thereon.

15\. PAYMENT OF FREIGHT. CARRIER'S LIEN FOR CHARGES. At the Carrier's option freight shall be paid [illegible] on actual gross [illegible] or [illegible] weight or measurement [illegible] may be calculated on the basis of the information furnished by the shipper, but the Carrier may at any time open the packages and examine, weigh, measure and value the goods. If shipper's particulars are in error and additional freight is payable, the goods shall be liable for any expense incurred for examining, weighing, measuring and valuing them. If such examination shows that the goods are not those described in the Bill of Lading, double freight must be paid on the goods actually shipped at the rate applicable to them. Full freight shall be paid on damaged or unsound goods. Full freight to the named port of discharge whether stated, intended to be, or actually either prepaid or collect, together with advance charges and all other charges against the goods elsewhere provided in this Bill of Lading shall be considered due and irrevocably earned on receipt of the goods by the Carrier, whether actually paid or not, to be received and retained without refund or deduction, under all circumstances, vessel and/or cargo lost or not lost, or the voyage broken up, interrupted or abandoned at any stage. If there be a forced interruption or abandonment of the voyage at the port of shipment or elsewhere, any forwarding of all or any part of the goods shall be at their risk and expense. Freight, disbursements and all charges shall be paid in full without offset, discount or other deduction. The Carrier shall have a lien on the goods, which shall survive delivery, for all charges of every kind concerning the goods, or which are to be borne by the Merchant, arising from any provisions whatsoever of this Bill of Lading, which lien may be enforced by public or private sale, with or without notice of time or place of sale. The Merchant shall be liable to the Carrier for the payment of all charges.

16\. CURRENCY CLAUSE. The Merchant's attention is drawn to the stipulation concerning currency in which the freight and charges are to be paid, rate of exchange, devaluation and other contingencies relative to freight and charges in the relevant tariff. If no such stipulations exist or are applicable or obtainable, the following clause shall apply:

If the currency in which freight and charges are quoted is devalued between the date of the freight agreement and the date when the freight and charges are paid, then all freight and charges shall be automatically and immediately increased equivalent to the extent of the devaluation of the said currency.

All freight and charges are quoted, calculated and collected and shall be paid in dollars of the United States of America or in such other currency in which the goods are or shall have been freighted or, at Carrier's option, in the currency of the port of loading or of the port of discharge converted in each case at the highest official rate of exchange ruling at closing bank hours on the last working day prior to the date of loading of the carrying vessel or on the actual date of payment whichever is higher.

17\. ANTWERP RECEPTION CLAUSE. Cargo for Antwerp to be landed and received by the Corporation appointed by the agents of the vessel, Merchant paying current landing charges whether delivery is taken overside or on the quay.

18\. WEIGHING OR MEASURING CARGO ON BOARD VESSEL. No weighing and/or measuring of cargo to take place on board the vessel or ashore simultaneously with the discharge without permission of the Master, any custom of the port notwithstanding. All expenses of weighing and/or measuring including detention and extra costs of discharging to be for Merchant's account.

19\. WAR RISKS CLAUSE. The Carrier shall have liberty to comply with any directions or recommendations given by any government or by any belligerent or by any organized body engaged in civil war, hostilities or warlike operations or by any person or body acting or purporting to act as or with the authority of any government or belligerent or of such organized body. Delivery or other disposition of the goods in accordance with such directions or recommendations shall be fulfilment of the contract voyage and the goods shall be solely at their risk and expense and all charges so incurred shall be payable by the Merchant and shall be a lien on the goods.

20\. PANAMA CANAL AND/OR SUEZ CLAUSE. If the passage through the Panama Canal and/or Suez Canal is, in the judgment of the Carrier, likely to be hindered or delayed through landslides, earthquakes, floods, obstructions, war, riot, strikes, civil commotions, salvage or any other cause whatsoever, the Carrier shall, in addition to the other rights contained in this Bill of Lading, have the right to return the goods to the port of shipment, or to proceed via the Strait of Magellan (and/or the Cape of Good Hope) or any other route, or to transfer the goods to craft or shore and forward them over the Isthmus of Panama by land, water or air, all at the risk and expense of the Merchant, thence to be shipped to destination by another vessel. All storage charges, when incurred at any place in transshipment, as well as all costs and expenses of transshipment and forwarding, for the account of the goods, are to be collected at destination.

21\. BOTH-TO-BLAME COLLISION CLAUSE. If the liability for any collision in which the vessel is involved while performing this contract falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:

If the vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the Master, mariner, pilot or the servants of the Carrier in navigation or in the management of the vessel, the Merchant will indemnify the Carrier against all loss or liability to the other or non-carrying vessel or her Owners in so far as such loss or liability represents loss of or damage to or any claim whatsoever of the Merchant, paid or payable by the other or non-carrying vessel or her Owners to the Merchant and set off, recouped or recovered by the other or non-carrying vessel or her Owners as part of their claim against the carrying vessel or the Carrier.

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect to a collision or contact.

22\. DEMISE CLAUSE. If the vessel is not owned by or chartered by demise to the Carrier or Line by whom this Bill of Lading is issued (as may be the case notwithstanding anything that appears to the contrary) this Bill of Lading shall take effect only as a contract with the Owner or demise charterer as the case may be as principal made through the agency of the said Carrier or Line who act as agents only and who shall be under no personal liability whatsoever in respect thereof.

23\. IRON AND STEEL PRODUCTS. The term "apparent good order and condition" when used in this Bill of Lading with reference to iron, steel or metal products does not mean that the goods, when received, were free of visible rust or moisture. If the shipper so requests, a substitute Bill of Lading will be issued omitting the above definition and setting forth any notations as to rust or moisture which may appear on the mate's or tally clerk's receipts.

24\. TRANSSHIPMENT CLAUSE. In case goods are placed at Carrier's disposal at or consigned to a port where the vessel does not expect to load or discharge (transshipment), the Carrier may forward the goods to the port of loading or from port of discharge to the port of destination. The Carrier, in making arrangements for any such transshipment, shall be considered solely the agent of the Merchant and without any other responsibility whatsoever, even though the freight for the whole transport has been collected by him. The carriage by any transshipment carrier shall be subject to all the terms whatsoever in the regular form of Bill of Lading or other shipping document used at the time by such carrier, whether issued for the goods or not, and even though such terms may be less favorable to the Merchant than the terms of this Bill of Lading. Pending or during transshipment the Carrier may store the goods ashore or afloat solely as agent of the Merchant and at the risk and expense of the goods and the Carrier shall not be liable for detention nor responsible for the acts or omissions of anyone to whom the goods are entrusted or delivered for storage, handling or any service incidental thereto.

25\. TIME FOR SUIT. In any event the Carrier and the vessel shall be discharged from all liability whatsoever in respect of the goods unless suit is brought within one year after the delivery of the goods or the date when the goods should have been delivered.

26\. JURISDICTION. Any claim against the Carrier arising under this Bill of Lading shall be decided at the principal place of business of the Carrier in accordance with the law of that place, to which the Carrier and the Merchant hereby submit themselves.

EXHIBIT 4 - CLAIM

LAW OFFICES
JOHN P. D'AMBROSIO, P.C.
THE HONEYWELL CENTER
370 TAXTER ROAD
ELMSFORD, NEW YORK 10523

TELEPHONE
914/592-3630

CABLE ADDRESS
AMBROSE, NEW YORK

June 6, 1974

(Williams, Dimond & Co.)
P.O. Box 997
Wilmington, Calif. 90744

(Att: Claim Department)

OUR REF: M1252

SS: URSULA JACOB

B/L: 1,2, & 3 Dated: 8/26/73

Gentlemen:

We have been retained to effect recovery of the captioned claim and are enclosing the documents indicated below. Your prompt investigation and payment will be appreciated.

SHIPMENT: 5000 bags coffee PORTS: PUNTARENAS/HELSINKI

WATER DAMAGE

B/L	#1:	125 bags	@ $52.22*	----------	$ 6,527.50
"	#2:	25 "	" 49.46**	----------	1,236.50
"	#3:	985 "	" 50.84***	----------	50,077.40

Plus freigh, handling, weightin & storage: 1,987.05

TOTAL CLAIM: $59,828.45

er Bag: FOB 69kg	**Per Bag: FOB 69 kg	***Per Bag: FOB 69kg
$72.00/50kg = $99.36	@ $70.00/50 kg = $96.60	@ $71.00/50kg =$97.98
freight 6.68	freight 6.68	freight 6.68
106.04	103.28	104.66
alvage 69kg	Salvage 69kg	.Salvage 69kg
DM 2/kg =	@ DM 2/kg =	@ DM 2/kg =
DM 138/bag 53.82	DM 138/bag 53.82	DM 138/bag 53.82
$52.22	$49.46	$50.84

PLEASE GRANT US AN EXTENSION OF SUIT TIME TO AND INCLUDING DECEMBER 31, 1974

Yours truly,

JOHN P. D'AMBROSIO

Enclosures: ☑ Bill of Lading ☑ Invoice ☐ Survey Report
☐ Damaged Rolls List ☐ Packing List ☐ Subrogation Receipt

EXHIBIT 5 - LAMORTE, BURNS & CO. LETTER DATED JUNE 26, 1974

Lamorte, Burns & Co., Inc.
Suite No. 3147
One World Trade Center
New York, N. Y. 10048

Telex: WU-12-5561 ITT-421478 RCA-238694
Telephone: (212) 432-0400 Cable Address: LABURNSHIP

Your Ref. M1252

Our Ref. 374-77

June 26, 1974

John P. D'Ambrosio, P.C.
The Honeywell Center
570 Taxter Road
Elmsford, New York 10523

"URSULA JACOB"
Puntarenas/Helsinki Bs/L 1,2,3
Arrived October, 1973
Alleged damage bags Coffee
Amount - $60,000.00

Gentlemen:

In consideration of your not arresting the vessel URSULA JACOB, or any other vessel belonging to the same ownership, or attaching any funds of the owner of the URSULA JACOB, in connection with suit which you may commence against the URSULA JACOB, her owner, et al, for alleged damage to coffee carried on the above vessel arriving at Helsinki in October, 1973, the undersigned Association hereby agrees:

1) To file, or cause to be filed, upon your demand, an appearance on behalf of the owner of the said vessel in the proposed suit aforementioned, and also agrees to file, or cause to be filed, a claim of owner of the URSULA JACOB in the said action, irrespective of her not being in the jurisdiction of the Court at the time, and without raising any question as to her absence from said jurisdiction.

2) In the event a final decree (after appeal, if any) be entered in favor of the claimant against the URSULA JACOB and/or her owner for damage to said cargo allegedly caused by the URSULA JACOB, then the undersigned Association agrees to pay and satisfy (up to and not exceeding $60,000.00) the said final decree or any lesser amount decreed by the Court or settled between the parties without final decree being rendered.

3) Upon demand, to cause to be filed a bond in form and sufficiency of surety satisfactory to you or to the Court in the above amount, securing your claim against the said action mentioned in sub-Division 2.

4) In the event the bond referred to under sub-Division 3, supra, is filed, the undersigned Association shall have no further obligation under sub-Division 2, supra.

It is understood and agreed that the signing of this letter by LAMORTE, BURNS & CO., INC. is not to be construed as binding them, but is to be binding only upon THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION LIMITED.

This letter is written entirely without prejudice to any rights or defenses which the said vessel or said owner may have under the covering bills of lading and/or charter parties and/or statutes in effect, none of which is to be regarded as waived.

Very truly yours,

THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION LIMITED

LAMORTE, BURNS & CO., INC.

August C. Burns, President

(as Attorney-in-fact for the above limited purpose only, as per authority from THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION LIMITED in telex dated June 14, 1974)

REPLY AFFIDAVIT OF MICHAEL J. CARCICH IN SUPPORT OF MOTION AND IN OPPOSITION TO CROSS-MOTION (Filed April 8, 1975) 36a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KOOPERATIVA FORBUNDET, STOCKHOLM,

Plaintiff,

-against-

VAASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB" and the SS URSULA JACOB, her engines, her boilers, etc.

Defendants.

74 Civ. 4076
(Judge Ward)

REPLY AFFIDAVIT IN SUPPORT OF MOTION AND IN OPPOSITION TO CROSS-MOTION

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MICHAEL J. CARCICH, being duly sworn, deposes and says:

I am an associate of the firm of CICHANOWICZ & CALLAN, the attorneys for the defendant, PARTENREEDEREI M.S. "URSULA JACOB", and am familiar with the previous proceedings had in this matter. I have read the answering affidavit and affidavit in support of Cross-Motion for Summary Judgment of John P. D'Ambrosio and I make the following reply:

Turning first to Mr. D'Ambrosio's contentions with respect to the motion to dismiss the complaint on the grounds of forum non conveniens, it is clear that they are without merit.

I have attempted to sort out Mr. D'Ambrosio's main contentions as to why this action should not be dismissed on the grounds of forum non conveniens and find them to be as follows and will answer each in order.

1. The plaintiff claims that since the bills of lading were bought by the plaintiff from a New York based company and negotiated through a New York bank, that this action

should not be dismissed on the grounds of forum non conveniens. I have no way of knowing whether or not this was in fact the case, but assuming that it was it is clear that this has no bearing on the motion to dismiss for forum non conveniens. A bill of lading is a negotiable instrument. It could and usually does pass through the hands of any number of people, in any number of countries. Where the negotiable instrument may travel, however, has nothing to do with the underlying obligation or claim herein which is for alleged damage to a shipment moving from Costa Rica to Sweden. All evidence with respect to that underlying obligation is either in Costa Rica or Sweden, and not in New York where the bill of lading was allegedly negotiated.

2. Next, plaintiff claims the action should stay here because co-defendant Vaasa Line Oy has a New York agent. This may well be the fact, but if it is, it is curious to note that plaintiff has been unable to execute its default judgment against said defendant, (See Mr. D'Ambrosio's affidavit page 5), and that Mr. D'Ambrosio found it necessary to write to their agent in California and their main office in Helsinki, (See Mr. D'Ambrosio's affidavit page 4). However, neither does this have any bearing on the motion since the transaction involved here had nothing to do with any business which Vaasa may have conducted in New York, but involved a shipment between Costa Rica and Sweden. With respect to this, I would bring the Courts attention to the fact that in Snam Progretti S.P.A. et al, v. Lauro Lines et al., 74 Civ. 241, attached to defendant's main brief in support of the motion that the court also noted that jurisdiction had been obtained by serving an independent steamship agent which had acted as defendant's agent on other occasions, but then went on to dismiss the action on the ground of forum non conveniens.

3. Mr. D'Ambrosio claims that this is an in rem action. However, that is clearly not the case. As indicated by the letter of guaranty issued by Lamorte, Burns & Co., Inc. on behalf of the defendant's P. & I. Club, (attached to D'Ambrosio's affidavit as exhibit "5"), Mr. D'Ambrosio specifically waived any right to an in rem action herein. In consideration of his not commencing such an in rem action by arresting the vessel, it is agreed that defendant Partenreederei M. S. "URSULA JACOB", would appear in this action in personam. Said defendant did so appear and has not waived any defenses herein except lack of in personam jurisdiction. Thus, this is solely an in personam action.

4. Next, Mr. D'Ambrosio claims that this suit should remain here because plaintiff has an office and place of business within this district. I hesitate to question the veracity of Mr. Morance, whose affidavit was submitted on this point by the plaintiff, and who claims to be the office manager for the plaintiff in New York. Within the limited time allowed me to prepare this affidavit, however, I have been able to find through directory assistance that plaintiff has no telephone listing in the Westchester directory. I have further determined through the secretary of state of New York State's office that plaintiff is not licensed to do business in New York State, yet it claims to have conducted five million dollars worth of business here during the past year. Perhaps Mr. Morance is mistaken. However, even if plaintiff is doing business in this district, I find it difficult to imagine what witnesses from its New York office it could produce who could give any relevant information as to the condition of the cargo at either Costa Rica or Stockholm.

Furthermore, it is clear that the residency or citizenship of a plaintiff has no bearing in a motion to dismiss for forum non conveniens. See Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972).

5. Next plaintiff claims that if the action were dismissed it would lose the security of the letter of indemnity. However, the Court could negate this problem by conditioning any dismissal on defendant agreeing to post the same security in any action commenced in any appropriate forum, which the defendant will stipulate to do.

6. Plaintiff next argues that the U.S. Carriage of Goods by Sea Act is applicable to this action, and therefore the motion to dismiss should be denied. Mr. D'Ambrosio is again mistaken, however. The back of the bill of lading herein, attached to Mr. D'Ambrosio's affidavit as exhibits "1" and "2" clearly provide that:

> "2. RESPONSIBILITY. This Bill of Lading shall have effect subject to the provisions of the Hague Rules contained in the International Convention for the Unification of Certain Rules Relating to Bills of Lading dated Brussels Auguat 25, 1924, as enacted in Finland by the Bill of Lading Act of June 9, 1939, unless the Hague Rules are made compulsorily applicable hereto as enacted in the country of shipment or destination, such as the United States Carriage of Goods by Sea Act, 1936,...."

Thus, this shipment would have been subject to the United States Carriage of Goods by Sea Act had the shipment been to or from the United States. Since it wasn't however, the Finnish equivalent of the Hague Rules would apply.

7. Next plaintiff claims that this is the only jurisdiction in which all the defendants are subject to suit. I find it difficult to believe that this is the fact. Surely Costa Rica and Sweden must have provisions similar to our long arm statutes which would subject all defendants transacting business in either of those countries to suit. In any event, defendant Partenreederei M.S. "URSULA JACOB" will agree, should dismissal be granted, to appear and defend this action in either Finland, Sweden, West Germany, or Costa Rica. Since defendant Vaasa is a Finnish corporation, plaintiff will at least be able to secure jurisdiction over all parties there.

8. Plaintiff then complains that this action would be time-barred under Costa Rican law. Plaintiff here makes a gratuitous jump from this court's finding in Esso Transport Co. Inc. v. Terminals Maracaibo, 352 F. Supp. 1030 that the law of Venezuels precludes waiver of the statute of limitations, to the conclusion that the law of Costa Rica is the same. However, there is no proof offered by plaintiff of that fact, and even if Costa Rican law does preclude such waiver, plaintiff would still be left with Sweden, Finland, and West Germany to pursue its claims, countries which plaintiff does not even claim preclude waiver of statutes of limitations.

9. Plaintiff's final contention is that this Court should not dismiss this case since plaintiff could secure jurisdiction over plaintiff by a Seider v. Roth attachment of the P. & I. policy. Whether this is an accurate analysis of Seider v. Roth, or not, (and I submit that it is not), such an attachment would have no bearing on a motion to dismiss for lack of contact with the jurisdiction. Farrell v. Piedmont Aviation, Inc. 441 F 2d 812 (2nd Cir.,1969).

All of plaintiff's contentions, therefore, are without merit. This case has absolutely no connections with New York or the United States. Mr. D'Ambrosio's absurd stretching of the facts here has not shown any such connection, or shown any prejudice to plaintiff if the motion is granted.

In fact, such a transfer would benefit not only the defendant, but also the plaintiff. As already indicated, even if plaintiff has offices here, the testimony which its employees here could give with respect to this claim would surely be inadequate to prove plaintiff's claim. No one here could possibly give any relevant information concerning a shipment from Costa Rica to Stockholm. Plaintiff would surely have to bring witnesses from either Stockholm or Costa Rica. Mr. D'Ambrosio's failure to submit any but his own affidavit on his cross-motion for summary judgment clearly illustrates the point that there is no witness in New York available to substantiate plaintiff's claim. Defendant, of course, of necessity would be put to great expense in proving its own case should this motion be denied since it does not have anyone who could testify here at all, while in either Stockholm or Costa Rica it would be able to at least have half its witnesses there, the ones who saw the loading or the discharging of the vessel, and in either Finland or West Germany, plaintiff and defendant would have less of a travel burden placed upon them in producing witnesses from Stockholm and the officers of both plaintiff and defendant corporations.

In any event, the bill of lading herein, although defendant Partenreederei M.S. "URSULA JACOB" is not a party thereto, clearly provides at paragraph "26" that the parties

thereto have chosen Helsinki, Finland as the forum for any actions between them. Since as already indicated this case is not governed by the U.S. Carriage of Goods by Sea Act, this choice of forum clause should be enforced by this Court. See Bremem v. Zapata Off-Shore Co. 407 U.S. 1 (1972).

Turning then to plaintiff's alleged cross-motion for summary judgment it is clear that it must be denied. No notice of cross-motion and no statement of facts as to which there is no triable issue of fact as required by Rule 9(g) of the Local General Rules of this Court has been served. Furthermore, despite the mandate of Rule 56(e) F.R.C.P. providing that on a motion for summary judgment:

> " Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein "

Mr. D'Ambrosio has only submitted his own affidavit in support of the cross-motion. Mr. D'Ambrosio has no personal knowledge of the facts of this case, and has not set forth facts admissible in evidence.

I would also point out that the Cross-Motion was not served at least 10 days prior to the return date as provided by Rule 56(c) F.R.C.P. In fact, the affidavits and memorandum were served by mail on April 4, 1975, and received by this office on April 7, although the return date of the motion and cross-motion herein was April 8, 1975. Thus, pursuant to General Rule 9(c)(2) of this Court which provides for service of answering affidavits at least 3 days before the return date of a motion if brought on by 10 days notice as here on defendants motion to dismiss, and Rule 6(e) F.R.C.P. which provides that when

service is mad by mail an additional three days must be added to the prescribed period, Mr. D'Ambrosio's papers were not served in a timely manner even if they were only answering papers to defendant's motion. This is despite the fact that defendant's motion herein, which was originally returnable on February 11, 1975 has been adjourned three times in order to give Mr. D'Ambrosio time to prepare answering papers.

As to the merits of Mr. D'Ambrosio's cross-motion, I would only ask the Court to note that the only proof Mr. D'Ambrosio offers that the shipment was not received in the same apparent order as it was loaded in Costa Rica is his own claim statement. This is hardly the type of proof required by Rule 56 F.R.C.P. It is doubtful that it would even be admissible as evidence at trial. As for the settlement of $30,000.00 which Mr. D'Ambrosio claims was agreed to, no such settlement was ever made by this defendant. Lamorte, Burns, and Co., Inc. recommended such a settlement to co-defendant Vaasa Line Oy, not to the defendant Partenreederie M.S. "URSULA JACOB".

Partenreederei M.S. "URSULA JACOB" is not liable for the alleged damage herein, and never agreed to even consider a settlement. Apparently, such a settlement is not satisfactory to co-defendant Vaasa Line Oy, since nothing further has been heard from them with respect to this recommendation. Mr. D'Ambrosio's statement that he understand such a settlement as having been agreed to is purely a flight of his own fancy. And our letter to your Honor of February 5, 1975, (Copy attached as Exhibit "1") does not state otherwise, since it was clearly stated therein that "a settlement formula may be worked out," not as Mr. D'Ambrosio suggests that it had been worked out.

Plaintiffs cross-motion, therefore, is inadequate both procedurally and substantively, and should be denied by this Court. Furthermore, if the Court will refer to my letter of March 21, 1975, (copy attached as exhibit "2"), I believe that it is clear that this motion has been interposed by Mr. D'Ambrosio at this time solely to further delay decision of defendant's motion to dismiss.

In this respect, I would ask the Court to refer to Rule 56(g) F.R.C.P. which provides:

> " Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorneys fees, and any offending party or attorney may be adjudged guilty of contempt."

I suggest that this would be an appropriate case in which to impose the sanctions of this rule.

WHEREFORE, deponent prays for the entry of an order denying the cross-motion and dismissing the complaint herein on the basis of forum non conveniens, but without prejudice to the commencement of a similar suit in an appropriate jurisdiction, and upon condition that defendant agree to waive any time bar defense not already available in the present action, agree to the jurisdiction of the Courts of Costa Rica, Finland, Sweden or West Germany depending on where the plaintiff choses

to recommence this suit, and agree to post the same security in such other Court as it has posted here with respect to this claim.

Dated: New York, New York
April 8, 1975

Michael J. Carcich
Michael J. Carcich

Sworn to before me this 8th day of April, 1975.

Wanda A. Ambrose

WANDA A. AMBROSE
Notary Public, State of New York
No. 43-4521630
Qualified in Richmond County
Commission Expires March 30, 1976

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

EXHIBIT 1 - LETTER TO ROBERT J. WARD, J., FROM CICHANOWICZ & CALLAN DATED FEBRUARY 5, 1975

February 5, 1975

Honorable Robert J. Ward
District Judge, United States District Court
United States Courthouse
Foley Square
New York, N. Y. 10007

Re: Kooperativa Forbundet, Stockholm
v.
Vaasa Line Oy, et al.
Docket - 74 Civ. 4076
Our File: 9113 DEA/M.C

Dear Judge Ward:

This case was recently referred to our office on behalf of the defendant vessel owner and we filed our answer on January 23, 1975. On January 24 we served a motion to dismiss the complaint on the grounds of forum non conveniens.

Settlement discussions have been hampered because the charterer has not appeared in the litigation. We were advised today that contact has been made in London and it is believed that a settlement formula may be worked out if the parties can have an additional 30 days. The purpose of this letter is to request an additional 30 days on the following items listed below as directed at the pre-trial conference held on January 17.

Answer by January 27.

All discovery to be completed by April 28.

Pre-Trial Order filed by May 28.

Motion to Dismiss now returnable February 11.

We respectfully submit that the possible benefit merits

a modest investment of 30 days with respect to a case which was filed less than 6 months ago. We have conferred with plaintiff's attorney who concurs in this request.

Very truly yours,

CICHANOWICZ & CALLAN

DBA:hep

By

cc: John P. D'Ambrosio, Esq.
Attorney for Plaintiff
Honeywell Center
570 Taxter Road
Elmsford, N.Y. 10523

bcc: Lamorte, Burns & Co., Inc.
Attn: Mr. T. J. Bradshaw
(Ref. 374-77)

EXHIBIT 2 - LETTER TO ROBERT J. WARD, J., FROM CICHANOWICZ & CALLAN DATED MARCH 24, 1975

March 24, 1975

BY HAND

The Honorable Robert J. Ward
United States District Court
Southern District of New York
40 Centre Street - Foley Square
New York, N.Y. 10007

Re: Kooperativa Forbundet, Stockholm v. Vaasa Line Oy, et al.
74 Civil 4076
Our File: 9113/MJC

Dear Judge Ward:

I am an associate of the firm of Cichanowicz & Callan, the attorneys for the defendant, Partenreederei M.S. URSULA JACOB.

I am writing, as I was directed by your secretary, to voice my objection to any further extensions of the return date of defendant's motion to dismiss this case on the grounds of forum non conveniens.

This motion, which was originally returnable on February 11, 1975, has already been adjourned twice, giving the attorney for the plaintiff well over two months to prepare and serve his answering papers. At this point, further extensions will only exhaust the time remaining for discovery, which is to be concluded, as your Honor directed, by June 11, 1975. Should the defendant's motion be denied by your Honor, this further exhaustion of discovery time will greatly prejudice the defendant, since to

The Honorable Robert J. Ward March 24, 1975

prepare its case for trial, it will be necessary to assemble witnesses and documents from Costa Rica, Sweden and West Germany.

Defendant, therefore, requests that your Honor refuse any further extension of the return date of this motion.

Very truly yours,

CICHANOWICZ & CALLAN

Michael J. Carcich

MJC:wa

cc: John P. D'Ambrosio
The Honeywell Center
570 Taxter Road
Elmsford, New York 10523

ORDER TO SHOW CAUSE (Filed April 9, 1975)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

.....x

KOOPERATIVA FORBUNDET, STOCKHOLM,

Plaintiff,

-against-

VAASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB" and the SS URSULA JACOB, her engines, her boilers, etc.,

Defendant.

.....x

ORDER TO SHOW CAUSE

74 Civ. 4076 (RJW)

Upon the annexed affidavit of Donald J. Kennedy, sworn to on the 8 day of April, 1975, the exhibits thereto annexed in support thereof, and upon all the pleadings and proceedings heretofore had herein, it is

ORDERED, that plaintiff Kooperativa Forbundet, Stockholm and its attorneys, show cause before the Honorable Robert J. Ward in Room ~~619~~ 906 at the United States Courthouse, Foley Square, Borough of Manhattan, City and State of New York, on the 11 day of April, 1975 at ~~10:00~~ 2:15 P.M., or as soon thereafter as counsel can be heard why an order pursuant to Rule 60(b) of the Federal Rules of Civil Procedure should be made and entered herein to vacate a default judgment taken in this action and permitting the defendant Vaasa Line Oy to answer or otherwise move in respect to the Complaint herein and for such other and further relief as the Court may deem just and proper,

RJW

ORDERED, that all proceedings on the part of the plaintiff and the U.S. Marshal under said judgment and execution thereon be and the same hereby is stayed until a determination of this motion to vacate defendant's default,

RJW

ORDERED, that service of a copy of this order together with a copy of the annexed papers upon which it is granted be served upon the office of the attorneys of record personally, on or before the 9 day of April, 1975 at 5:00 P.M. shall be deemed sufficient service thereto.

Dated: New York, New York
April 8, 1975.

Issued at 5:30 P.M.

U.S.D.J.

TO: JOHN D'AMBROSIO
The Honeywell Center
570 Taxter Road
Elmsford, New York 10523

CICHANOWICZ & CALIAN
80 Broad Street
New York, New York 10004

AFFIDAVIT OF DONALD J. KENNEDY IN SUPPORT OF MOTION
(Filed April 9, 1975)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

.....X

KOOPERATIVA FORBUNDET, STOCKHOLM,

Plaintiff,

-against-

VAASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB" and the MS URSULA JACOB, her engines, her boilers, etc.,

Defendant.

AFFIDAVIT

74 Civ. 407

.....X

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

DONALD J. KENNEDY, being duly sworn, upon information and belief, deposes and says:

1. I am an attorney-at-law and associated with the firm of Haight, Gardner, Poor & Havens, attorneys for the defendant Vaasa Line OY and am familiar with the pleadings and all prior proceedings had herein.

2. I submit this affidavit pursuant to Federal Rules of Civil Procedure 60(b) in connection with the defendant's motion to vacate a default judgment dated February 7, 1975 and entered on February 18, 1975 in the United States District Court, Southern District of New York, in the amount of $64,952.22 against the defendant Vaasa Line OY, a copy of which is annexed hereto as Exhibit 1, and for and such other further relief as to this Court may be just, proper and equitable.

3. In this action the plaintiff Kooperativa Forbundet, Stockholm seeks to recover $59,813.47 for cargo damage from defendants Vaasa Line OY and Partenreederei M.S. "Ursula Jacob" arising out of a shipment

of coffee from Puntarenas, Costa Rica to Stockholm, Sweden. Deponent was informed of this action on or about April 1, 1975, and at that time, the defendant Vaasa Line's time to answer or move with respect to the complaint herein had expired and the plaintiff had entered a judgment against defendant Vaasa Line OY by default.

4. Deponent has been retained to defend this action, and from the review of the file in this matter, deponent believes that defendant Vaasa Line OY has a good and substantial defense of the cause of action set forth in the complaint.

5. The summons was served on or about September 20, 1974. The United States Marshall Service Instructions and Process Record, a copy of which is annexed hereto as Exhibit 2, indicates that service was to be made on either "Williams, Dimond" or "Halcyon Steamship" at 17 Battery Place, and that both are agents for defendant Vaasa Line OY. Upon information and belief, Williams, Dimond does not have an office in New York and Halcyon Steamship Co., Inc. is not an agent of the defendant Vaasa Line OY. The affidavit of Alfred N. Lawrence dated April 7, 1975, a copy of which is annexed as Exhibit 3 , states that Williams, Dimond and Co. does not have an office in New York and that Halcyon Steamship Co., Inc. is not an agent of Vaasa Line OY. The remark section of the Marshal's return indicates that service was refused and contains the quotation "they are not agents for Vaasa Line". Accordingly, there was no personal service on the defendant.

6. Plaintiff Kooperativa Forbundet, Stockholm is a foreign corporation with no office or place of business in the Southern District of New York. Defendant Vaasa Line OY, Partenreederei M.S. "Ursula Jacob" is a German

corporation with no office or place of business in the Southern District of New York. The M.S. "Ursula Jacob" is registered under the German flag. Defendant Vaasa Line OY is a Finnish corporation. The cargo damage claim arises out of a shipment of coffee which was loaded aboard the vessel in Costa Rica and discharged in Stockholm, Sweden. Upon information and belief, the instant litigation does not have any contacts with this jurisdiction.

7. To explain the circumstances surrounding this default, it is necessary to explain how the deponent became involved with this case.

A. On March 24, 1975 deponent's law firm received a request from Nordisk Skibsrderforening, a defense association, to contact Mr. D'Ambrosio, attorney for the plaintiffs herein, and after discussing this matter with him, to report to them on the status of the legal proceedings in New York. The deponent was assigned this case.

B. On or about April 1, 1975 the deponent contacted Mr. D'Ambrosio and discussed the matter with him. Thereafter, we reported to Nordisk Skibsrederforening and advised them that a default judgment had been entered against defendant Vaasa Line OY in the amount of $64,952.22.

C. On April 4, 1975 we were contacted by Nordisk Skibsrederforening and advised that Vaasa Line OY stated, in effect, that the reason a default judgment was taken against them was that they did not have sufficient notice of the proceeding. We were advised that a copy of Mr. D'Ambrosio's letter dated January 21, 1975 to Vaasa Line OY was received by them on January 29, 1975. We were also advised that Mr. D'Ambrosio's letter of January 21, 1975 did not contain the correct address of defendant Vaasa Line OY.

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

D. On April 7, 1975 we were instructed by Nordisk Skibsrederforening to make a motion to vacate the default judgment entered against Vaasa Line OY.

8. We respectfully submit that on the basis of this affidavit and the attached memorandum of law that there are sufficient grounds to allow relief from the default judgment taken against Vaasa Line OY, which occurred through no fault of its own but through the mistake, inadvertence and excusable neglect of its defense association and counsel.

No previous application for the relief herein requested has been made.

Donald J. Kennedy

Sworn to before me this
day of April, 1975

Notary Public

RUBY M. FITZHUGH
NOTARY PUBLIC, State of New York
No. 24-6319735
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1976

EXHIBIT 1 - DEFAULT JUDGMENT

(Printed herein at p.10a)

EXHIBIT 2 - U.S. MARSHALL SERVICE INSTRUCTIONS AND PROCESS RECORD

KOOPERATIVE FORBUNDET, STOCKHOLM
DEFENDANT VAASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB" and the SS URSULA JACOB, her engines, her boilers, etc.

74 Civ 40 (CWard)

TYPE OF WRIT: Summons/Complaint.

SERVE — NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
Williams, Dimond & Co. and Halcyon Steamship Company Inc.

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

AT 17 Battery Place, New York, New York

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

JOHN P. D'AMBROSIO, P.C.
The Honeywell Center
570 Taxter Road
Elmsford, N.Y. 10523

Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc. — NO. 1 OF TOTAL 1

CHECK IF APPLICABLE:
☐ One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS:

Serve either Williams Dimond & or Halcyon Steamship. They're both at same office & are agents for Defendant Vaasa Line, Oy.

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR: John P. D'Ambrosio

TELEPHONE NUMBER: 914/592-3830

DATE: 9/17/74

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted. — DEPOSIT/CODE:

DIST. OF ORIGIN: 54

DISTRICT TO SERVE: 57

LOCATION OF SUB OFFICE OF DIST. TO SERVE:

I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown. — SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK:

DATE: 9/20/74

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above): REFUSED SERVICE

☐ A person of suitable age and discretion then abiding in the defendant's usual place of abode.

ADDRESS (Complete only if different than shown above)

FEE (If applicable): $3 —

MILEAGE: $0.36

DATE(S) OF ENDEAVOR (Use Remarks if necessary)

DATE OF SERVICE

TIME: 12:24 AM PM

SIGNATURE OF U. S. MARSHAL OR DEPUTY: Paul J. Walsh

REMARKS

(REFUSED SERVICE) THEY ARE NOT AGENTS FOR VAASA LINE. PROCESS LEFT AT OFFICE ANYWAY -JJW

D/C

USM-285 (Ed. 7-1-70)

1. CLERK OF THE COURT

EXHIBIT 3 - AFFIDAVIT OF ALFRED N. LAWRENCE DATED APRIL 7, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

KOOPERATIVA FORBUNDET, STOCKHOLM,

Plaintiff,

-against-

VAASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB" and the SS URSULA JACOB, her engines, her boilers, etc.,

Defendants.

AFFIDAVIT

74 Civ. 4076 (RJW)

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

ALFRED N. LAWRENCE, JR., being duly sworn, deposes and says:

1. I am presently employed by Halcyon Steamship Co., Inc. at 17 Battery Place, New York, New York as Director of Agency and Sales, and I have been employed with Halcyon Steamship Co., Inc. in various capacities for the past five years.

2. I make this affidavit at the request of Donald J. Kennedy and in support of the motion of Vaasa Line Oy to vacate the default judgment which was entered against it on or about February 18, 1975.

3. Halcyon Steamship Co., Inc. does not handle cargo bookings for Vaasa Line Oy, nor is Halcyon Steamship Co., Inc. a general agent or managing agent for Vaasa Line Oy, nor is Halcyon Steamship Co., Inc. authorized by appointment to receive service of process on behalf of Vaasa Line Oy.

4. Upon information and belief, Williams, Dimond and Co. does not have an office at 17 Battery Place, New York, New York or in the State of New York.

Furthermore, Williams, Dimond and Co. does not share office space with Halcyon Steamship Co., Inc.

5. Upon information and belief, the vessels of Vaasa Line Oy do not call in the East Coast or Gulf ports of the United States and, of course, they do not load or discharge cargo in New York at all. It is my understanding that Vaasa Line Oy traded mainly between Europe and the West Coast of the United States, Mexico and Central America.

Alfred N. Lawrence, Jr.

Sworn to before me this
7 day of April, 1975

Notary Public

AFFIDAVIT OF JOHN P. D'AMBROSIO IN OPPOSITION TO MOTION
(Filed April 17, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KOOPERATIVA FORBUNDET, STOCKHOLM, Plaintiff - against - VAASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB" and the SS URSULA JACOB, her engines, her boilers, etc. Defendants	74 Civ. 4076 (Judge Ward) AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

JOHN P. D'AMBROSIO, being duly sworn, deposes and says:

I am the attorney for the Plaintiff herein and am fully familiar with all of the facts in this case and I make this affidavit in opposition to the motion by the Defendant, Vaasa Line OY, to vacate the judgment entered herein.

I have read the affidavits of Donald J. Kennedy and Alfred N. Lawrence, Jr. in support of this motion. I believe that what few facts are related therein and the conclusions drawn therefrom are by and large in error and that they don't come close to providing this Court with reasonable grounds for granting the motion.

As matters of fact Mr. Kennedy is wrong in alleging "upon information and belief" that the Plaintiff has no office or place of business in the Southern District of New York or that Williams, Dimond

does not have an office here, or that this case does not have any contacts with this jurisdiction. The actual facts in this regard have been stated at great length in my affidavits in opposition to the co-defendant's motion to dismiss this case for forum non conveniens. I respectfully direct the Court's attention to those affidavits and ask that they be read in opposition to this motion as well.

Defendant's attorney's affidavit in support of the motion and memorandum of law present a mixed bag of facts and law which, it is submitted, fall far short of the requirements of the law on an application such as this, which are:

1. That the judgment came about because of mistake, inadvertence or excusable neglect.

2. That the Plaintiff would not be prejudiced by setting the judgment aside.

3. That a meritorious defense exists.

In fact, no where in the moving papers is there the statement of a single fact which would fulfill any of the three requirements above. Mr. Kennedy in paragraph 4 of his affidavit alleges his belief "that defendant Vaasa Line OY has a good and substantial defense of the cause of actions set forth in the complaint." That's the first and last mention that he makes of a defense and, as will hereinafter appear, it is woefully inadequate. The Defendant's suggestion on page 5 of its memorandum of law that a meritorious defense is treated by the Courts as a mere adjunct and given some passing nod in consideration of a motion such as this is absolutely wrong. The showing of a meritorious defense in a detailed and factual fashion is

an absolute necessity, totally lacking to the Defendant in this instant.

Defendant also seems to have some trouble in pinning down whether the default occurred as a result of mistake, inadvertence or excusable neglect and whether that was on the part of the Defendant or its defense association or its lawyer. The nearest I can come to ascribing a reason for the default is that the Defendant did not have sufficient notice of the proceeding (Mr. Kennedy's affidavit, paragraph 7c). However, even that conclusory statement is promptly put to rest by Mr. Kennedy in his very next line when he says that he was advised that a copy of my letter of January 21, 1975 written at the instruction of this Court was actually received by the Defendant on January 29, 1975. In light of that I fail to see how the Defendant can claim insufficient notice of the proceeding.

Thus, from the papers themselves there is absolutely no evidence of a meritorious defense and no indication whatever of mistake, inadvertence or excusable neglect.

The only other ground advanced in general by the Defendant as a basis for vacation of the judgment herein is that this Court has not obtained jurisdiction over the person of the Defendant. And even on this score the Defendant's counsel is not sure. On page 6 of the memorandum he expresses just a mere doubt that the Plaintiff obtained jurisdiction over Vaasa Line. I suggest that he is doubtful for a very good reason. Vaasa Line is doing business in this jurisdiction.

On the question of jurisdiction, I respectfully submit to this Court that Vaasa Line is a) doing business in New York, and b) doing

business in California. Should this Court vacate this judgment on the grounds that jurisdiction has not been obtained over Vaasa Line, I would ask that the vacation be conditioned upon Vaasa Line's waiver of the statute of limitations in order that an action may be commenced against it in California whereupon I will seek to remove it to this jurisdiction where the other Defendant and the ship have already appeared. The full circle will then have been completed to the benefit of no one. In the alternative I would ask that the judgment, if it be vacated, be conditioned upon the Defendant's appearing in this action and submitting to the jurisdiction of this Court in New York.

But I don't think that that point will even have to be reached because the Defendant is subject to the jurisdiction of this Court already and the judgment should not be vacated in any event because the Defendant has shown neither an excuse nor a defense.

The Defendant, Vaasa Line is certainly doing business in California. They have a general agent there, Williams, Dimond & Co. and advertise a regular liner service to the U. S. Pacific Coast and Hawaii. They do so now and did so in 1973. Vaasa Line is also doing business in New York. Williams, Dimond & Co., its general agent has an office at 17 Battery Place. Beyond that it advertises in The Journal of Commerce Transportation Telephone Tickler as being represented by F. W. Hartmann & Co., Inc. also at 17 Battery Place. The conclusory statements by Alfred N. Lawrence, Jr. that it is not a general or managing agent for Vaasa Line is not dispositive of the question. The question is - what does Halcyon Steamship Co. or F. W. Hartmann & Co., Inc. or Williams, Dimond & Co.

do in New York on behalf of Vaasa Line. Certainly Mr. Lawrence is absolutely wrong in paragraph 4 of his affidavit when he states that Williams Dimond & Co. does not have an office at 17 Battery Place, New York, N.Y. They are listed in The Transportation Telephone Tickler at that address, telephone number 425-4370, which coincidentally happens to be the same telephone number for Halcyon Steamship Company Inc. One wonders whether Mr. Lawrence's affidavit has any worth at all.

Concerning the question of the alleged good and substantial defense, I submit that at this juncture this Court should have a clear indication, as I have, that neither Defendant has any good defense much less a substantial one much less even a defense to this action. One can search in vain through all the papers that have been submitted thus far and find not one indication of any defense to this action by either Defendant. This lack of information on this point is most telling. There simply is no defense and wishing it were so simply won't make it so. As will appear in the memorandum on behalf of the Plaintiff considerably more than just a perfunctory statement that a meritorious defense exists is required. There must be a complete setting forth of a factual and legal basis for the defense if in fact it exists. But how can it exist in this case. As far back as June 1974 both Defendants were provided with the bills of lading and the commercial invoices which comprise the claim. Arithmetic would have produced the same results that I did. In light of these facts and in light of the joint survey conducted by the Defendants in this case together with the Plaintiff it is not at all surprising that no defense has been tendered. There simply isn't any.

Concerning the mistake, inadvertence and excusable neglect, I

submit that if it was that of counsel or the defense association, then the Defendant is charged with it. If it was that of the Defendant, it was neither excusable nor are there any facts shown in support of that excuse. As has been shown, the only fact alleged in this regard is that Defendant did not have sufficient notice of the proceeding. Let's see. On June 6, 1974 my claim previously annexed as an exhibit in opposition to the co-defendant's motion was sent to the Defendant's general agent in Wilmington, California. That claim was acknowledged on June 19, 1974 by this Defendant's agent (exhibit 4). I was directed to communicate further with the Defendant directly at Merihuolto OY, Kronsbergsgatan 5, P.O. Box 16133, Helsinki, Finland. On June 26, 1974 I did so (exhibit 5). As can be seen I requested an immediate advice and an extension of suit time, neither of which was forthcoming. Thereafter I had many telephone calls with Lamorte, Burns & Co., Inc. who told me that they had been in touch with both Defendants' defense association who in fact worked out the settlement. Conversations were had with Lamorte, Burns in May, June, September, October, December 1974 and January 1975. The rest is history. After a pre-trial conference on January 17, 1975, my letter of January 21, 1975 went out not only to Williams, Dimond & Co. in Wilmington, Calif. but also to the Defendant in Helsinki. In fact that letter was received on January 29 before the judgment was entered herein. I submit that the Defendant not only had sufficient notice of the proceeding but was kept very well advised of the proceeding at every stage thereof. I feel that the default in this case was wilful because the Defendant had nothing to lose by its own judgment, the vessel having been sold as I have indicated

before.

Finally, a word about what prejudice would be suffered by the Plaintiff should this judgment be vacated. First of course, the Plaintiff would be deprived of its money. But beyond that it would be put to the additional expense of relitigating this case and in effect ending up exactly where it is now. I commend, therefore, to this Court's attention the wisdom of the rule that a meritorious defense must be set forth. Otherwise we are merely tilting at windmills and wasting this Court's time in the bargain.

I request, therefore, that this Court deny the motion for the reasons stated or, if the motion be granted, that it be granted on condition that this Defendant appear generally in this action in this District and that it be ordered to pay costs and attorney's fees to the Plaintiff for the inconvenience it has caused.

Finally, as should be abundantly clear at this time, there is absolutely no question of fact in this case on the part of either Defendant. Plaintiff has made out a clear prima facie case and Defendants have set forth no fact questions to counter those allegations. Such a factual showing in detail is absolutely necessary in order to defeat a motion for summary judgment which has in effect been made by the Plaintiff in opposing the co-defendant's motion. It is, again, respectfully requested, therefore, that this Court grant Plaintiff's summary judgment, and, a posteriori, deny this motion and the companion motion of co-defen-

dant with costs and disbursements.

Dated: Elmsford, New York
April 16, 1975

JOHN P. D'AMBROSIO

Sworn to before me this

day of April 1975

Notary Public

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

WILLIAMS, DIMOND & CO.
ESTABLISHED 1882 INCORPORATED 1904

BERTH 170
P. O. BOX 997
WILMINGTON, CALIFORNIA 90744

SAN FRANCISCO
PORTLAND
SEATTLE

CABLE ADDRESS
"KAIMANA"

June 19, 1974

Merihuolto OY
Kronsbergsgatan 5
P.O. Box 16133
Helsinki, Finland

Gentlemen:

Re: "URSULA JACOB", Voyage 10-E, Bs/L Puntarenas, C.R/Stockholm-KF Port via Helsinki Nos. 1,2 & 3 dated 8-26-73; Claim of John P. D'Ambrosio, P.C., #M1252, $59,828.45; Our Ref: H-9050-P

Kindly note the attached claim for alleged water damage in shipment of 5,000 sacks of coffee.

File is submitted herewith for your investigation with the P & I Club representatives. Please then handle directly with claimant to conclusion. Thank you.

Yours very truly,

HANSEATIC VAASA LINE
WILLIAMS, DIMOND & CO.

C. S. Winkler

C. S. WINKLER
Manager, Insurance & Claims

CSW/lc

cc: John P. D'Ambrosio, P.C.
570 Taxter Road
Elmsford, New York 10523

Kindly note the foregoing. If further correspondence is required please write directly to Merihuolto OY. It is understood, of course, that our action in this matter is not to be construed as an admission of liability, and we reserve to the vessel, her owners, agents and/or charterers, all rights and privileges afforded them under the contract of carriage and/or otherwise.

EXHIBIT 5 - LETTER FROM JOHN P. D'AMBROSIO TO MERIHUOLTO OY
DATED JUNE 26, 1974

LAW OFFICES

JOHN P. D'AMBROSIO, P. C.

THE HONEYWELL CENTER

570 TAXTER ROAD

ELMSFORD, NEW YORK 10523

TELEPHONE
(914) 592-3830
(212) 687-6828

CABLE ADDRESS
AMBROSE, NEW YORK

June 26, 1974

Merihuolto OY
Kronsbergsgatan 5
P.O. Box 16133
Helsinki, Finland

Re: Our File #M1252
SS URSULA JACOB, Voy. 10-E,
Bs/L Puntarenas, C.R./Stockholm
KF Port via Helsinki #s 1,2,3
Dated 8/26/73
Williams Dimond Ref #H9050-P
Amt: $59,828.45

Gentlemen:

Copy of letter of June 19, 1974 from Williams, Dimond & Co. to you is enclosed.

We have received a letter of undertaking from vessel's P & I underwriters in exchange for our not arresting the URSULA JACOB on her last visit to the U.S. West Coast. Please arrange a similar letter on behalf of Vaasa Line and extend our suit time in order that the arrest of the vessel will not be necessary.

Your immediate response is appreciated.

Yours truly,

John P. D'Ambrosio

JPD/mo
encl.

cc: Williams, Dimond & Co.
Att: C. S. Winkler

SUPPLEMENTAL AFFIDAVIT OF JOHN P. D'AMBROSIO IN OPPOSITION AND IN SUPPORT OF CROSS-MOTION (Filed April 17, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KOOPERATIVA FORBUNDET, STOCKHOLM,

Plaintiff,

-against-

VAASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB" and the SS URSULA JACOB, her engines, her boilers, etc.,

Defendants.

74 Civ. 4076 RJW

SUPPLEMENTAL AFFIDAVIT IN OPPOSITION AND IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
) SS:
COUNTY OF WESTCHESTER)

JOHN P. D'AMBROSIO, being duly sworn, deposes and says:

I have read Mr. Carcich's affidavit in opposition to plaintiff's cross-motion and in reply to plaintiff's opposition.

Loquacious though it may be the reply affidavit sheds no more light on this case than did the papers in support of the motion.

It is not surprising, because, the facts and the law as set forth in my affidavit and memorandum of law on behalf of the plaintiff are indisputable.

In fact, manifestly conspicuous by its absence is any reference to the many cases cited in plaintiff's memorandum in opposition to the motion or, more telling, is there the setting forth of any facts to counter those set forth by the plaintiff either in opposition to the motion or in support of its cross-motion for summary judgment.

Defendant complains that the cross-motion is procedurally defective in that the defendant has not really had enough time to counter the allegations made therein. I submit that as of this writing it has had enough time but nothing further has been heard from the defendant. Perhaps, because there is nothing further to say.

Not surprising is it that Mr. Carcich is generally both in his reply and in his opposition to the cross-motion wrong again in practically all that he sets forth, and where he is not wrong, what he sets forth is clearly inapposite.

Rather than coming to grips with the main issues clearly set forth in plaintiff's memorandum in opposition he picks bits and pieces of the affidavits presented in opposition and thus makes a feeble attempt to sustain an otherwise untenable position.

Thus, his observation that the bill of lading would normally pass through the hands of many people is totally gratuitous and lays the basis for his non sequitur that where a negotiable instrument may travel has nothing to do with the underlying obligation. The bills of lading and their travels had everything to do with the underlying obligation and their travels through New York placed New York very much in the picture. Thus, contrary to what Mr. Carcich would have us believe, not all evidence with respect to the underlying obligation is either in Costa Rica or Sweden.

I am happy to see a concession that VAASA LINE OY may very well have an agent in New York. I am convinced that it does. The fact that

plaintiff has been thus unable to effect its execution against VAASA LINE is merely an indication of Mr. Carcich's inability to differentiate the right from the remedy. It is not at all surprising to find that judgment debtors have no assets in a particular jurisdiction. I know they have assets in California.

Nor should Mr. Carcich find it "curious" that I wrote to California and Helsinki. I wanted to make absolutely sure that the defendant was notified of its default. Apparently despite my caution the defendant undertook to disregard my admonitions which were simply the admonitions of this Court and under whose direction my letter was written. I suppose we would have been hearing lengthy arguments about why the defendant really didn't default if the only letter I had written had been directed to its New York agent. Nor is a rehashing of the Snam case going to help us further since it was clearly pointed out in plaintiff's memorandum that the Court in Snam found that no one did business in New York.

Defendant is absolutely wrong in claiming that this is not an in rem action. It clearly is an in rem action and in rem relief was sought in the complaint. Moreover, I have no idea where I waived my right to an in rem action by accepting defendant's Club letter. Mr. Carcich is absolutely wrong. The letter speaks for itself and clearly was tendered in exchange for non arrest of the vessel in rem. It specifically submitted the vessel to the jurisdiction of this Court in rem and any characterization of the facts to the contrary by the defendant simply won't change them as they are.

I am relieved to find that Mr. Carcich hesitates to question the veracity of Mr. Morance. His hesitancy is understandable since his point in paragraph 4 of his Affidavit clearly evinces his misunderstanding of Section 218 of the General Corporation Law of New York. That Section presupposes the performance of activities in New York by a foreign corporation which would require such a corporation to obtain a Certificate. The plaintiff is not in such a position any more than was the manufacturer of that prolific breed, Volkswagens, Delagi v. Volkswagenwerk AG of Wolfsburg, Germany 1972, 29 N.Y. 2d 426, 328 N.Y.S. 2d 653.

The Court of Appeals of New York has consistently held that:

> "Where a foreign corporation's primary contact here is to solicit business or to merely facilitate the sale and delivery of its merchandise in interstate commerce, then such a corporation should be exempt from any burdens which our laws place upon foreign corporations doing business here." Hovey v. DeLong Hook & Eye Co. 211 N.Y. 420, 427, 105 N.E. 667, 668; Angldile Computing Scale Co. v. Gladstone 164 App. Div. at page 374, 149 N.Y.S. at page 811; William L. Bonnell Co. v. Katz, 196 N.Y.S. 2d 763.

Also the United States Court of Appeals for the District of Columbia agrees:

> "A foreign corporation is not required to procure a certificate of authority merely for the prosecution of litigation." Norman A. Loe vs. Normalair, Ltd. 222 A. (2d) 643.

Thus, even if Mr. Carcich is correct that the plaintiff has not filed a certificate to do business in New York it is clearly inapposite to the determination of the question before this Court.

Where it did or did not file a certificate is equally impertinent to the question of the relevancy of information which witnesses in New York could produce. I submit that they could produce a great deal of information since it is cheaper to fly documents than it is to fly people, and documents in the possession of the New York personnel of the plaintiff could amply demonstrate the plaintiff's case at trial.

I believe that any question concerning the applicability of the Carriage of Goods by Sea Act has been amply briefed and it would only belabor the point to spend more of this Court's time on that question, except to say that it should have no difficulty in applying the Act in this jurisdiction.

Defendant makes a purely gratuitous assumption that "Costa Rica and Sweden must have provisions similar to our long arm statutes". I am not all that convinced. Nor is it plaintiff's position to prove that fact. What the defendant suggests even more strongly in its reply affidavit is that plaintiff should fragment its case and try it in several disparate jurisdiction. An unreasonable demand.

Contrary to defendant's conclusion, all of plaintiff's contentions are manifestly with great merit. I have not stretched the facts. I have merely set them forth. The defendant has stretched its imagination but has done nothing about the facts, or the law, for that matter.

Nor is Mr. Carcich's dissatisfaction with my affidavit on plaintiff's cross-motion of any import. Rather than clearly illustrating the point that there is no witness in New York available to substantiate plaintiff's claim, it rather clearly demonstrates the law in New York which has sustained the common sense approach that where the proofs are documentary, an affidavit by anyone other than attorney would be merely superfluous (New York Appellate Division, Third Dept., January 17, 1974, Dorkin v. American Expres Co. 43 A.D.2d 877, 351 N.Y.S.2d 190). There the Court affirmed summary judgment based on a lawyer's affidavit alone.

There is nothing further that an affidavit could provide this Court beyond those facts contained in the documents submitted to the Court. What the Court should note is that the defendant has not countered those arguments even at this moment of truth. Clean bills of lading were issued and the coffee was delivered damaged. A prima facie case is made out. Damages to the penny have been set out and the defendant has said or done nothing about them. The plaintiff should have summary judgment.

As to the elusive settlement in this case, I know that I personally spoke with Lamorte, Burns & Co., Inc. and, before I wrote the plaintiff, specifically asked whether the settlement would be forthcoming from both defendants and was firm. I was advised that it was and that it did and I recommended it.

Finally, Mr. Carcich limps along by suggesting that costs should be imposed because I have delayed the decision in this case. Apparently thinking that saying makes it so, he attaches as Exhibit 1 to his reply affidavit his firm's letter of February 5, 1975, to which I made reference earlier, but apparently didn't read it. The first thirty day adjournment was requested by his own firm. Nor had the case been adjourned three times in order to give me time to prepare answering papers. It had been adjourned because a settlement was in the offing and VAASA LINE was in default. Again, the facts relative to the settlement could clearly be set forth on the record by Mr. Carcich since he was engaged by Lamorte Burns & Co., Inc. to defend this action and affidavit by a member of that firm would set the record straight. Of course, that affidavit would show that we had a firm settlement worked out.

Which brings me back to the argument upon which I opened this affidavit, namely, that vast volumes are spoken by what the defendants do not say rather than by the inapposite observations they do make. The defendant has not come to grips with the facts of this case or with the law as set out in plaintiff's memorandum. Because of that failure, it should fail, both on its motion and on its opposition to plaintiff's cross-motion for summary judgment. Defendant has thoroughly failed in enlightening this Court as to its defense, if any. It has thoroughly failed to consider the law as set forth in plaintiff's memorandum in opposition to the motion to remove for forum non conveniens. Accordingly, it is respectfully submitted that the defendant should be denied the relief it seeks and the plaintiff should be granted a judgment on its cross-motion.

Dated: Elmsford, New York
April 16, 1975

JOHN P. D'AMBROSIO

Sworn to before me this
16th day of April 1975

Notary Public

PATRICIA E. JOHANSMEYER
Notary Public, State of New York
No. 4522832
Qualified in Westchester County
Term Expires March 30, 1976

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

.....x

KOOPERATIVA FORBUNDET, STOCKHOLM,

Plaintiff,

-against-

VAASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB" and the SS URSULA JACOB, her engines, her boilers, etc.,

Defendant.

.....x

REPLY AFFIDAVIT

74 Civ. 4076 (RJW)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DONALD J. KENNEDY, being duly sworn, upon information and belief, deposes and says:

1. I am an attorney-at-law and associate with the firm of Haight, Gardner, Poor & Havens, attorneys for the defendant Vaasa Line OY and am familiar with the pleadings and the proceedings on this motion.

2. I have read the affidavit in opposition of John P. D'Ambrosio dated April 16, 1975 and a Supplemental Memorandum of Law on behalf of the plaintiff.

3. The most striking weakness in plaintiff's case is its failure to obtain jurisdiction over Vaasa. Plaintiff has not submitted any evidence to this Court to sustain the elements upon which it rests the validity of the service it has effected. Plaintiff's failure in this regard is most telling.

(a) The affidavit of John P. D'Ambrosio dated February 6, 1975 in support of default judgment states in part:

> "a copy of the Summons and Complaint was served on the above named defendants, Vaasa Line OY... by registered mail, return receipt requested, pursuant to the provisions of Federal Rules of Civil Procedure 4(i) and on the defendant Vaasa Line OY also by delivery thereof to its general agent in New York City, that proof of said service was duly filed with the Clerk of this Court on October 7, 1974."

Aside from the fact that the plaintiff does not state the basis for service in accordance with FRCP 4(i), the docket sheet in the captioned action does not indicate that defendant Vaasa was served by mail. Furthermore the affidavit of Raymond F. Burghardt, Clerk of the United States District Court for the Southern District of New York dated February 7, 1975, does not indicate that Vaasa served a copy of the Summons pursuant to FRCP 4(i) by registered mail, return receipt requested.

(b) The D'Ambrosio affidavit dated February 6, 1975 in support of default judgment also states in effect that a copy of the Summons and Complaint was served on Vaasa by delivery thereof to its general agents in New York City. (underscoring added)

(c) The United States Marshal Service Instructions and Process Record indicates that service was to be made on either "Williams, Dimond" or "Halcyon Steamship" at 17 Battery

Place, and that both are agents for defendant Vaasa Line OY. Williams, Dimond does not have an office in New York and Halcyon Steamship Co., Inc. is not an agent for the defendant Vaasa Line OY. The affidavit of Alfred N. Lawrence, Jr. dated April 7, 1975, previously submitted to the court, states that Williams, Dimond and Co. does not have an office in New York and that Halcyon Steamship Co., Inc. is not an agent of Vaasa. The remark section of the Marshal's return indicates that service was refused and contains the quotation "they are not agents for Vaasa Line".

(d) Mr. D'Ambrosio in his affidavit dated April 16, 1975 states "Mr. Kennedy is wrong in alleging ... that Williams, Dimond does not have an office here ...". Today, in order to confirm my understanding that Williams, Dimond & Co. does not have an office in New York, I contacted Williams, Dimond & Co. in California by telephone. I spoke with Mr. Lawrence R. Simpson, Jr., a Vice President of Williams, Dimond & Co. who has been employed by them for the past 26 years. In reply to my question whether Williams, Dimond & Co. had an office in New York, he said that Williams, Dimond & Co. does not have an office in New York and has not had an office in New York as long as he has been with the company.

(e) Mr. D'Ambrosio at 5 of his affidavit dated April 16, 1975 has represented to the court that Mr. Lawrence's affidavit is absolutely wrong where he states that Williams, Dimond & Co. does not have an office at 17 Battery Place, New York, N.Y. Yet, he fails to provide the court any evidence to support his statements.

4. The bald assertions in the affidavits of Mr. D'Ambrosio that Williams, Dimond & Co. has an office at 17 Battery Place and that service was made on Vaasa's general agent in New York are completely without any factual support. We would like to call the court's attention to the fact that Vaasa Line, in support of its motion, submitted the affidavit of Mr. Alfred N. Lawrence, Jr., which states that Halcycon Steamship Co., Inc. is not a general agent or managing agent for Vaasa, nor is Halcyon authorized by appointment to receive service of process on behalf of Vaasa. Moreover, the Lawrence affidavit states the Williams, Dimond & Co. does not have an office at 17 Battery Place. In addition, that fact today was confirmed by your deponent in a telephone conversation with Mr. Lawrence R. Simpson, Jr. of Williams, Dimond & Co.

5. Furthermore, the additional statements in Mr. D'Ambrosio's affidavit concerning F. W. Hartmann are totally irrelevant to the issues in this case. The alleged basis of jurisdiction over Vaasa is that service was made upon Halcyon Steamship Co., Inc. Your deponent fails to see where any discussion of what F. W. Hartmann does or does not do is relevant.

6. This court should not permit the plaintiff to go on a fishing expedition merely on the basis of the statement of counsel for the plaintiff that Vaasa is doing business in New York and that Williams, Dimond & Co. has an office at 17 Battery Place. The Marshal's Return of Service in this action clearly indicates that service was refused by Halcyon and the remark section indicates that they are not agents for Vaasa Line. If the plaintiff intended to seriously litigate this case it would have taken steps immediately to obtain jurisdiction over Vaasa after he was put on notice that his attempt at service on them was ineffective.

7. Since Vaasa neither has an agent in New York nor an office in New York, we would hope that the court would understand why a Finnish corporation like Vaasa would be confused at the fact it was named a defendant in an action in New York and service was made on its agent there.

8. Plaintiff suggests that if the default judgment against Vaasa is vacated in New York, an action will be commended against Vaasa in California. Any such attempt to maintain an action against Vaasa in California would be futile because it would be dismissed on the grounds of forum non conveniens, since the shipment in question had no connection with California.

9. The attorney for the plaintiff contends that if the default judgment against Vaasa is vacated, it would suffer prejudice. One of the examples of prejudice cited by plaintiff in its affidavit in opposition is the fact that it would be put to the additional

expense of relitigating this case. Nothing has been litigated in this case and the default judgment against Vaasa bears that out. Vaasa has been prejudiced since plaintiff took a default judgment against it without obtaining in personam jurisdiction. Vaasa will suffer additional prejudice in attacking the default judgment if plaintiff attempts to enforce it.

It is submitted that the court should order plaintiff to pay Vaasa's reasonable expenses incurred in vacating the default judgment entered against it.

Donald J. Kennedy

Sworn to before me this
18th day of April, 1975.

Notary Public

MARIE A. CROCELLI
Notary Public, State of New York
No. 60-5004800
Qualified in Westchester County
Certificate filed in N. Y. Co.
Commission Expires March 30, 1976

SUPPLEMENTAL AFFIDAVIT OF JOHN P. D'AMBROSIO IN OPPOSITION TO REPLY PAPERS (Filed April 24, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KOOPERATIVA FORBUNDET, STOCKHOLM Plaintiff - against - VAASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB", and the SS URSULA JACOB, her engines, her boilers, etc. Defendants	74 Civ. 4076 (RJW) SUPPLEMENTAL AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

JOHN P. D'AMBROSIO, being duly sworn, deposes and says:

I have read the Defendant, Vaasa Line's reply memorandum and Mr. Kennedy's reply affidavit.

Conspicuous by its absence in these reply papers is any reference to the law or the facts as set forth in my affidavit in opposition or supplemental memorandum of law. In fact, the points made by Defendant and its counsel in the moving papers and treated in opposition by me have been apparently completely abandoned in the reply which now takes a different heading in devoting itself almost completely to the assertion of the Defendant's contention that this Court lacks inpersonam jurisdiction.

I must conclude at the outset that the points made in opposition and on that memorandum are valid since there does not appear any

further argument by the Defendant that it lacked sufficient notice of the judgment.

Mr. Kennedy must be convinced of the truth of his argument since he repeats it several times that the Plaintiff has not submitted any evidence to this Court to sustain the elements upon which it rests the validity of the service it has effected. On the contrary, the Plaintiff has submitted all of the evidence which it presently has. In this respect I respectfully direct the Court's attention to my affidavit in opposition concerning Defendant's activities in New York as now known by me. Williams Dimond does have an office in New York. Denying it will not make it go away. Page 593 of The Journal of Commerce Transportation Telephone Tickler for 1974 is attached hereto as exhibit 1. Williams Dimond is clearly shown at 17 Battery Place, telephone #425-4370, cable address: KINGFISHER, TWX: 710-581-6225, Telex: 23-2629. And Williams Dimond is Defendant's general agent in the United States.

Page 276 of the Tickler is attached as exhibit 2 and it shows Halycon Steamship Company at 17 Battery Place as representing Williams Dimond & Co. Pages 278, 286 and 288 of the Tickler are also attached and they clearly show that Vaasa Line is represented by F. W. Hartmann & Co. also at 17 Battery Place. Mr. Furphy, shown in the Tickler as representing Vaasa Line at F. W. Hartmann & Co. has had occasion to write me in the past on other matters involving Vaasa Line, exhibit 3.

While Williams Dimond & Co. may tell Mr. Kennedy that they don't have an office here, I'd appreciate an affidavit by them in which they might explain their ad in The Transportation Telephone Tickler. In

this regard I do not think that Mr. Kennedy's affidavit is at all probative for it has been held that:

> "An affidavit by an attorney without personal knowledge of the facts has no probative value and should be disregarded." DiSabato v. Soffes, 193 N.Y.S.2d 184, 9 A.D. 2d 297.

Insofaras the Lawrence affidavit goes, it must really stand on its own merits, or demerits. How Mr. Lawrence can state that Williams Dimond doesn't have an office at 17 Battery Place is really inexplicable.

Nor is it at all germane to the determination of this issue whether Halycon did or did not want to accept the summons and complaint.

Mr. Kennedy states that he fails to see the relevance of what F. W. Hartmann does or does not do. In order to make it absolutely clear, the relevance of F. W. Hartmann's activities is that they are probably the activities of the Defendant and, to the extent that it does or does not do something on behalf of the Defendant, the Defendant may or may not be doing business in New York. Certainly what F. W. Hartmann does for the Defendant or on its behalf has everything to do with the matter. The basis for the Court's in personam jurisdiction over the Defendant is that it did and does business in the Southern District of New York and that business is very likely done through its agents, Williams Dimond & Co., Halycon Shipping, and F. W. Hartmann & Co., Inc.

There are really no other facts that either side can present to this Court by affidavit. I respectfully request that if facts are insufficient for the Court to make a determination as to whether or not the Defendant was doing business within the rules of law as developed in New York and in this jurisdiction, then testimony should be taken in that

regard and this motion should be held in abeyance pending the taking of that testimony by deposition or otherwise.

I would also ask that the Plaintiff, if service is held ineffective thus far against the Defendant, Vaasa Line, be given leave to serve Vaasa Line in California or Finland under Rule 4d 7.

I would ask that this Court view its resolution of this situation after a consideration of the motion of the co-Defendant to dismiss for forum non conveniens and a consideration of Plaintiff's motion for summary judgment. I respectfully submit that if this Court finds that the case ought not to be dismissed for forum non conveniens, which I think has been manifestly demonstrated by the Plaintiff, then that alone should resolve this motion of the co-Defendant to vacate the default judgment since, if this is the proper forum for this case, then,

1. The action being in rem, and the vessel already subject to the jurisdiction of this Court by virtue of its placing of guarantee in lieu of its arrest, and

2. This action having been timely commenced against both Defendants,

3. The Defendant, Vaasa Line, can be served in California where it has a line manager and a general agent.

The case against Vaasa would then revert to this jurisdiction where it properly belongs where this Court will then be called upon to determine whether the Plaintiff should have summary judgment. Thus, this motion really takes us around in circles and lands us right back here where absolutely nothing has been said or presented to this Court to defeat Plaintiff's motion for summary judgment.

I therefore respectfully submit that in effect, if this Court resolves the co-Defendant's motion in Plaintiff's behalf and retains jurisdiction, and finds that Plaintiff is entitled to summary judgment, then a determination that Defendant, Vaasa Line, was not properly served would be rendered totally academic.

However, for the reasons hereinbefore set forth, I believe that Vaasa Line was properly served since it is doing business in this jurisdiction and if there is any doubt about that, then this motion should be held in abeyance pending the taking of testimony on that point.

In any event, I respectfully submit that this case ought not be dismissed against Vaasa Line on this motion since, the complaint having been timely filed, a defect of service can be readily remedied whereupon Plaintiff's motion for summary judgment will be squarely before this Court.

I therefore again respectfully request that both Defendants' motions be denied and Plaintiff's cross motion for summary judgment be granted.

Dated: Elmsford, New York
April 22, 1975

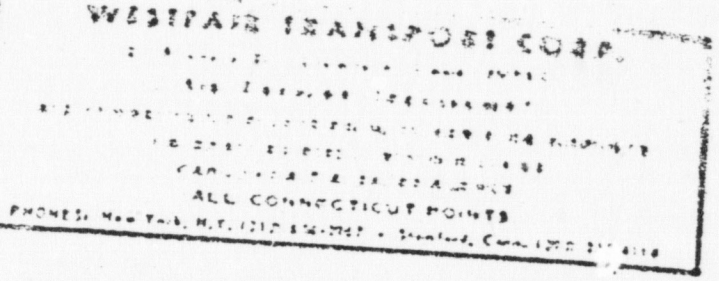
JOHN P. D'AMBROSIO

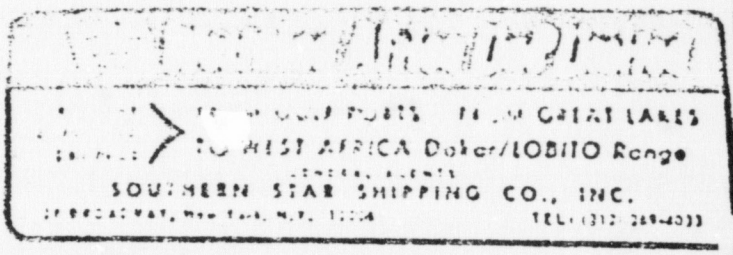
Sworn to before me this

day of April 1975

Notary Public

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT





STFAIR TRANSPORT CORP. (AC)(MC)
31 Victory Street,
Stamford, Conn. 06902 .....(203) 323-4114
esident & Operations Manager - Dave Cleveland
ew York Wire .....(212) 656-3967

l-Larsen Co., Inc. (see Texas Transport & Terminal Corp.)
ghouse Marine Equipment (MES), 162 Chambers 10007 267-8166
e President - T. J. Briskey
nsco Freight Co. (DFF), 475 11th Ave. 10018 239-8278
nd Africa Line (see Texas Transport & Terminal Co., Inc.)

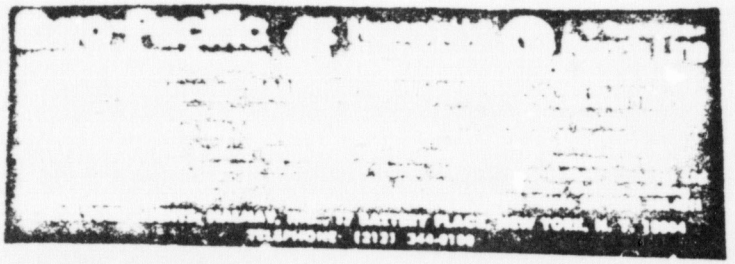
WIND AFRICA LINE LIMITED (SSC)
Broadway, New York, N.Y. 10006 269-4033
e: SOSTARSHIP NEW YORK
: ITT 420498
TWX: 710-581-4290
RCA 232484
President & General Traffic Manager - H. E. McKay
Night) .....
tant Traffic Managers - J. E. Muxo, N. Pangas .....(914) 949-1872
tant T.M. - Operations - Nicholas Pangas
tant T.M. - Documentation - Joseph E. Muxo
d Cargo Supervisor - Ernest Schicchi
& Schedules - Anne Bellini

Weyerhaeuser Line (SSC), P. O. Box 629, Newark, N. J. 07101 624-7880
Wheeling Transportation, Inc. (W), 248 North Ave., E., Elizabeth, N. J. 07207 .(201)354-5050
Wheelock Brothers (see Eastern Express, Inc.)
White Express Co., Inc., The (T), 176 Flushing Ave., Bklyn, N. Y. 11205 624-7636
President - Anthony White
White Line Corp. (W), 995 Brook Ave., Bronx, N. Y. 10451 993-5943
White Stack Towing Corp. (see Charleston S. C. - Vol. II)
White, A. E., Moving & Storage Co. (IHR)(W), 45-55 Front St.,
East Rockaway, L. I., N. Y. 11518 .....(516) 593-8400
Whitney, J. F. & Co., Incorporated (SB)(SSA), 11 Park Place 10007 732-6815
Wignav Agencies Limited (CB)(SBA)(SSA), 56 Pine Street, 10005 422-8500
Cable: WIGNAV
Telex: 235252/GRANT UR
President - William I. Grant
Wilcon, F. B. Co., Inc. (see Boston Mass. - Vol. II)
Wilford & McKay, Inc. (SSA), 17 Battery Place 10004 .....269-5962/5
Cable: HUWILFORD NYK
Telex: 012248
Vice President - George A. Hooper
Manager - John L. Carroll (Night) 987-2868
Operating Manager - Arthur T. Garrett (Night) .....(201) 787-3654
Willever, J. R., Inc. (see Barnett/Nova Int'l.)
Williams & Wells Co. (MES), 820 Greenwich 10014 255-1800
Cable: WILWELCO NY
TWX: RCA 235478
Telex: ITT 420098
Ch. Bd. - N. G. Margolin
Pres. & Treas. - S. A. Margolin
V. P. - Grover Erb
V. P. - Stephen Spruce
Ass't Secty. - V. McAuley
Williams Moving & Express Co. (T), 165 West 127th 10027 864-9292
Williams, Diamond & Co., U. S. West Coast, 17 Battery Place, 10004 425-4370
Calbe: KINGFISHER
TWX: 710-581-6225
Telex: 23-2629
Williams, J. B., Express, Inc. (T), Foot of Apollo St. 11222 782-1700
Williamson Transportation, Inc. (T), 130 Lenox Ave., Stamford, Conn. 06906 325-3521
Wilmick Warehouse Inc., 160 Pamrapo Avenue, Jersey City, N. J. 07305 435-9531
Wilmington Shipping Company (see Wilmington N. C. - Vol. IV)

[redacted]

Sales & Traffic Representative - Michael Carpenter, Jr.
H. M. Package Delivery Service (see Philadelphia Pa. - Vol IV).
H.P.H. Auto Trucking Co., Inc. (T), 108 Stockton St., Newark, N. J. 07103 344-7414
Direct New York Wire 962-3044
Hackett Motor Express (see H. M. E. Motor Express Co., Inc.)
Haefele Transportation (IFF), 4325 Bath, Philadelphia, Pa. 19137 966-5283

Hahn Bros., Fireproof Warehouses, Inc. (W), 108-120 W. 107th St. 10025 222-3670
Chairman - Andrew N. Obes
President - John C. Shavor
Vice President - Edward M. Monserrate
Asst. Secretary & Controller - Russell J. Ubele
Warehouses: 231 East 55th St. 753-3662
108 West 107th St. 222-3670
Halcyon Steamship Company, Inc. (CB)(SC)(SBA)(SSA)(SSC), 17 Battery 10004 425-4370
Cable: KINGFISHER
TWX: 710-581-6225
Telex: RCA 232629
President - Frank L. Crocker
Operations - Camille La Porte
Brokerage - Anthony J. Dimino
Agency - Alfred N. Lawrence, Jr.
Traffic Manager - Walter R. Carney
Accounting - Catherine Benevent
Representing:
Port Stockton, California
Williams, Dimond & Co., U. S. West Coast
New York Marine Services Company
Agents:
Sidarma Line - U.S. Gulf & South Atlantic, Mexico South America - Mediterranean
Haley, Jas. J. Trucking Co. (T), 71 Sullivan 10012 962-2589
Halkedis, Costalas & Wiemken, Inc. (SSA), 52 Broadway 10004 269-0650
Cable: HALCOSWIM
TWX: 710-581-3489
President - Theodore Halkedis
Vice President - Paul A. Wiemken
Vice President - Ekkehard Schmitz
Hall Street Cold Storage Warehouses, Inc. (W), 14 Hall St., Brooklyn, N. Y. 11205 855-3636
Halmar Trucking Corp. (T), 167 Crosby 10012 226-6880



HALNAV, INC. (SSA)

17 Battery Place, New York, N. Y. 10004 344-0100

Telex: 12-8215

(Agents for: Combi Line, Combi Line LASH System, Euro-Pacific Joint Serv., Holland America Line, Central Amer. Services, Scindia Line (Hong Kong Taiwan)
Vice Presidents - John F. Dubbelman, Paul F. Ware
Bookings - Hugh Sagona
Sales Representatives - Joseph C. Fasano, L. Christophersen
Bill of Lading & General - C. A. Olsen

Halperin Shipping Co., Inc. (CHB)(IFF), 1 Maiden Lane 10038 349-7960
Cable: LOUHALPER
President - Louis Halperin
Treasurer - Arthur Halperin
Secretary - Henry J. Mizii
Halsey Stuart & Co. Inc. (AC), 30 Broad 10004 944-4400
Halter Marine Services, Inc. (SB), 52 Wall 10005 344-1249
Hamilton Forwarding (IFF), 100 Church St. 10007 964-4395
Cable: HAMFORCO
Telex: 222953
Division of Hensel, Bruckmann and Lorbacher, Inc.
President - Walter Schaaf
Export Traffic Manager - H. J. Arribas
Hamilton Harbour Commissioners, The (see Hamilton, Ont. Canada - Vol. - Vol. II)
Hamilton Terminal Corporation (S), 17 Battery Place 10004 269-6040
Hamilton, C. C. & Co., Inc. (W), 541 W. 29th St. 10001 594-1444
President - M. Davis
Hampton Roads Steamship Agency, Inc. (see Norfolk Va. - Vol. III)
Hampton, J. W., Jr. & Co., Inc. (AC)(CHB)(IFF), 233 Broadway 10007 349-5066
President - G. B. Shoule
Import Manager - Bruno J. Trocciola
Ass't. Import Manager - Robert C. Shoule, Jr.
Export Manager - George J. Potts
Hancock Bank (see Gulfport Miss. - Vol. II)
Handsel Services Corporation (MI), 99 John St. 10038 374-1160
Cable: HANDCOVER
Telex: RCA 235913 HMS-UR
President - Ronald F. Javello

HARTMANN, F.W. & CO., INC. (Continued)

Black Star Line - West Africa
Manager - John E. Benasich
Asst. Mgr. - Herbert J. Hein
Freight Bookings - Jacques Coquillat
Pier-Shed 141, Pt. Newark, New Jersey ..... (201) 344-2900
Receiving Clerk - Jack Dritschel
Delivery Clerk - Henry Slicker
Sea Express Service-Far East
Manager - Edward De Francesco
Assistant - Charles Bruns
Pier 3, Army Base, Brooklyn
Receiving Clerk - John Flynn 492-4810
Delivery Clerk - Joe Natoli 492-4880
Hanseatic-Vaasa Line - James R. Furphy
Sales Department - Michael A. Guarraia, Manager - George Kleber, James Doris, James Servino, Wm. Flohr
Inward Freight-All Services
Manager - Thomas DeGennaro
Inward Sales - P. P. R. Kruis
Bill of Lading Department
Manager - George Muessig
Claims Department - Manager - Geo. Miller
Operations Department
Manager - John McAlick
Asst. - S. Krauss

Hartnett, C. A. Co. (AC)(CHB)(IFF), 11 Broadway 10004 944-6843-4
Traffic Manager - Maurice Rodriguez
Boston Office - 830 Saratoga St., E. Boston 569-9323
President - C. A. Hartnett
Vice President - A. Farr
Hartwig, W., Trucking (T), 4316 Grand Ave., No. Bergen, N.J. 07047 863-2560

Hauser & Co. (see Norfolk Va. - Vol. III)

HASMAN & BAXT, INC. (AC)(IFF)(T)(W)
39 Broadway, New York, N. Y. 10006 483-9420
Cable: HASMANBAXT
Telex: WU-12-9268
Telex: ITT-42-2521
President - John B. Baxt
Vice President - Charles J. Ladue
Secretary-Treasurer - Mitchell P. Baxt
Assistant to the President - Howard Kamen
Assistant Traffic Manager - Donald Golz
Billing Supervisor - Juan A. Ramirez

Hasman Shipping Corp., 16 Beaver St. 10004 269-7445
Cable: SHIPHASMAN

HAUSER, D., INC. (AC)(CHB)(IFF)
One World Trade Center, Suite 1047,
New York, N. Y. 10048 432-0022
Cable: RESUAHD
Telex: 423742
Chairwomen of the Board - Mary Hauser
President - Stewart B. Hauser
Export Traffic Manager - Stewart B. Hauser
Import Traffic Manager - Michael Panvissuto

ARTMANN, F. W. & CO., INC. (CB) (SBA)(SSA)

17 Battery Place, New York, N.Y. 10004 425-6100

Cable- HARTCOSHIP
TWX: 718-581-5967
TWX: 710-581-3430
Telex: 232849

President - Joseph F. Daly
Executive Vice President - Rolf D. Hartmann
First Vice President - Peter W. Hartmann
Vice President - Patrick F. Mongno
Ass't Vice President - John E. Benasich
Ass't Vice President - Edward DeFrancesco
Chartering Department - G. W. Woodworth, Gordon Bruce
Mark Sands & R. Barron
Hansa Line-Middle East Service
Manager - Patrick F. Mongno
Asst. Mgrs. - Robert Casar, Vincent Sullivan
Freight Bookings - Christopher Muessig
Pier-Ft. of 21st Street, Brooklyn 788-8300
Receiving Clerk - Thomas Quinn
Delivery Clerk - Sam Sansevere
Hansa Line-Worldwide Heavy Lifts-Special Projects
Manager - Edward DeFrancesco
Asst. - James R. Furphy

continued

[illegible]

[illegible] 233-3600

HANSA LINE *(see Hartmann, F. W. & Co., Inc.)*

Hanseatic-Vaasa Line (see Hartmann, F. W. & Co., Inc.)

HANSEN & TIDEMANN, INC. (CB)(S)(SSA)(SBA)

One World Trade Center, Suite 1623,

New York, N. Y. 10048 432-1910

Cable: HANDT
Telex: RCA 22-2443

TWX: 710-581-6079
Telex: ITT 42-1274
Telex: WU 12-7496

Managing Director - R. Paddon
Vice President - Svend Hansen, Jr.
Chartering - J. Mayell, C. Aagaard
Sales Manager - J. J. O'Neil
Sales Representatives - G. Mancini, E. McFadden, W. Barrie
Traffic Manager - T. Mora
Rates and Bookings - M. Shea, John Hoy
Agency/Stevedoring Liaison - Tore Evju
Accounting - R. Rapone
Operations Manager - Heiko Terborg
Operations - Tore Evju
Freight Department-Manager - A. J. McLeod
Cashier - A. Rickert
Offices:
Houston, Texas - 16th Floor, Cotton Exchange Bldg ..... (713) 223-4181
Chairman - Svend Habden
Vice President - Robert S. Reid
Vice President - Sales - B. W. White

continued

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

.....x

KOOPERATIVA FORBUNDET, STOCKHOLM,

Plaintiff,

-against-

VAASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB" and the SS URSULA JACOB, her engines, her boilers, etc.,

Defendant.

.....x

O R D E R

74 Civ. 4076 (RJW)

This cause came on for hearing on April 8, 1975 before the Honorable Robert J. Ward, on the motion of Vaasa Line OY to vacate a default judgment against it taken in this action by the plaintiff Kooperativa Forbundet, Stockholm and permitting defendant Vaasa Line OY to answer or otherwise move in respect to the Complaint and for such other and further relief as the Court may deem just and proper, and the Court having heard the argument of counsel and being fully advised, it is

ORDERED, that defendant's motion to vacate default be granted.

Dated: New York, New York
May , 1975

6/4

U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KOOPERATIVA FORBUNDET, STOCKHOLM,

Plaintiff, : 74 Civ. 4076
R.J.W.

-against-

:

VAASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB" and the SS URSULA JACOB, her engines, her boilers, etc., :

Defendants. :

----------x

Defendant Partenreederei M.S. Ursula Jacob ("the shipowner") moves pursuant to Rule 12(b), Fed. R. Civ. P., for an order dismissing this action on the grounds of forum non conveniens. For the reasons hereinafter stated, the motion is conditionally granted.

This action concerns damage to a cargo of coffee shipped from Costa Rica to Stockholm, Sweden. The plaintiff a Swedish corporation, was the purchaser of the coffee. Defendant Vaasa Line Oy ("the carrier"), a corporation with its principal place of business in Finland, issued the bills of lading covering the cargo. The shipowner is a West German corporation whose single asset was the defendant ship, the M.S. Ursula Jacob. The coffee was loaded aboard the Ursula

Jacob in Puntarenas, Costa Rica and bills of lading were issued clean on board. Upon arrival in Stockholm, the coffee was found to have suffered water damage. The grounds for the instant motion are that this litigation has no contact with this jurisdiction, that obtaining evidence here will be more inconvenient than in any other forum where the suit could have been brought, and that the bills of lading upon which the plaintiff sues contain a forum-selection clause limiting litigation to Finland. Plaintiff opposes the motion on the grounds that this is an in rem action and the Court's discretion to dismiss for forum non conveniens is very circumscribed, that there is no convenient forum for this action and that this Court is a forum of necessity, and that the forum-selection clause is unenforceable.

With respect to plaintiff's first contention, this action is in rem as against the ship only. Insofar as plaintiff has joined the shipowner and the carrier as defendants, the litigation is in personam. Thus, in ruling on the shipowner's motion, the Court will apply the forum non conveniens standard appropriate to in personam actions. See Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947).

Turning to the merits, this jurisdiction has no relevant contacts with the underlying transaction. Even if, as plaintiff contends, the coffee was ordered from New York

and the bills of lading were purchased here, these events would be irrelevant to the question of liability for the water damage. On the other hand, all of the available proof concerning the damage to the cargo is likely to be in Finland or Sweden.[1] It would thus appear that trial of this action in New York would be unfair and inconvenient to the defendants.

Plaintiff argues, in terms of the convenience of trial here, that this Court is a forum of necessity. It asserts that this jurisdiction is the only place where all parties can be brought before the Court. If this were once true, it is no longer. The shipowner has consented to submit to the jurisdiction of Finland. Moreover, it would appear that all parties cannot be joined in this jurisdiction for trial on the merits. Paragraph 26 of the bills of lading concerning the damaged cargo provides:

> JURISDICTION. Any claim against the Carrier arising under this Bill of Lading shall be decided at the principal place of business of the Carrier in accordance with the law of the place to which the Carrier and the Merchant hereby submit themselves.

This is a forum-selection clause and it is prima facie valid and enforceable. The Bremen v. Zapata Off-Shore Co., 407 U.S. 7, 10 (1972). Plaintiff has shown no compelling countervailing reason to deny effect to this agreement. It argues that the clause was not freely bargained for and the bills

of lading are adhesion contracts. This argument is not persuasive. In The Bremen, the forum-selection clause was not the subject of bargaining. Forum-selection clauses in bills of lading have been enforced. See Roach v. Hapag-Lloyd, A.G., 358 F. Supp. 481 (N.D. Cal. 1973).[2] Thus, it would appear that upon the motion of defendant carrie the Court would be bound to enforce the forum-selection clause.[3] See Roach v. Hapag-Lloyd, supra. The shipowner contends that it may also avail itself of the forum-selection clause by virtue of paragraph 3 of the bills of lading.[4] In light of the result the Court reaches, it is not necessary to decide this question. In this Court's view, the fact that the carrier may have to be dismissed, with the resulting potential prejudice to the shipowner, weighs heavily in favor of the exercise of its discretion to grant the motion.

Plaintiff argues that it will be denied its day in Court should this action be dismissed in favor of a Finnish forum. The M.S. Ursula Jacob has been sold. As the ship was the sole asset of the defendant shipowner, the latter may not have any assets with which to satisfy a judgment. Plaintiff argues that the bond filed in this Court may be the sole source of satisfaction should a judgment be entered in its favor. Any prejudice to the plaintiff in this regard may be adequately prevented by conditioning the grant of the motion upon the

deposit of an equivalent bond incorporating the same terms and conditions in Finland.

After considering all the relevant factors, this Court finds that the convenience of the parties and witnesses requires this Court to exercise its discretion to decline jurisdiction of this action. Courts of admiralty have frequently declined to exercise jurisdiction in suits between foreigners. See, e.g., Canada Malting Co. v. Paterson Steamships, Ltd., 285 U.S. 413, 421 (1932). The mere fact that there may be some contact with this jurisdiction does not preclude the Court, in its discretion, from declining to entertain the action when those contacts are irrelevant to the issues in the case. Canada Malting Co. v. Paterson Steamships, Ltd., supra; Sherkat Tazamoni Auto Internash v. Hellenic Lines, Ltd., 277 F. Supp. 462 (S.D.N.Y. 1967).

Accordingly, defendant shipowner's motion is granted on condition that both defendants submit to the jurisdiction of the courts of Finland without raising any defenses based on laches or time bars, provided such jurisdiction is invoked by plaintiff in a reasonable time and that defendant shipowner deposit a bond in Finland equal to that in this action and incorporating the same terms and conditions. See Garis v. Compania Maritima San Basilio, S.A., 261 F. Supp. 917 (S.D.N.Y. 1966), aff'd, 386 F.2d 155 (2d Cir. 1967).

Settle order on notice.

Dated: June 9, 1975

U. S. D. J.

NOTES

1 The M.S. Ursula Jacob has been sold and the whereabouts of the crew are unknown. If any crew members could be found they would likely be residents of West Germany.

2 Although plaintiff has argued to the contrary, the bills of lading are not subject to the Carriage of Goods by Sea Act, 46 U.S.C. §1300 et seq.

3 A default judgment was taken against the carrier which was not vacated until argument of this motion. Although the carrier could not formally join in the motion, it did argue for enforcement of the clause and submitted a memorandum of law.

4 Paragraph 3 provides:

> 3. EXEMPTIONS AND IMMUNITIES OF ALL SERVANTS AGENTS AND INDEPENDENT CONTRACTORS. It is hereby expressly agreed that no servant or agent of the Carrier, or any independent contractor from time to time employed by the Carrier (including stevedores), shall in any circumstances whatsoever be under any liability whatsoever to the Merchant as carrier, bailee or otherwise howsoever, in contract or in tort, for any loss, damage or delay of whatsoever kind, and, but without prejudice to the generality of the foregoing provisions of this clause, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defense and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder or otherwise by law shall also be available and shall extend to protect every such servant, agent or independent contractor, and in contracting for the foregoing provisions of this clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or agents or employed by him as independent contractors as aforesaid from time to time.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

KOOPERATIVA FORBUNDET, STOCKHOLM,

Plaintiff,

-against-

VAASA LINE OY, PARTENREEDEREI M.S. "URSULA JACOB" and the S.S. URSULA JACOB, her engines, her boilers, etc.,

Defendants.

COUNTER ORDER

74 Civ. 4076 (RJW)

Defendant Partenreederei M.S. URSULA JACOB, having moved to dismiss the complaint on the grounds of forum non conveniens, and plaintiff having submitted affidavits and memoranda in opposition thereto, and the Court having heard argument by attorneys for the plaintiff and attorneys for defendant, and after due deliberation, having granted said motion conditionally in an opinion dated June 9, 1975, which is incorporated herein and made a part hereof,

NOW, on motion of CICHANOWICZ & CALLAN, attorneys for defendant Partenreederei M.S. URSULA JACOB, and HAIGHT, GARDNER, POOR & HAVENS, attorneys for defendant Vaasa Line Oy, it is

ORDERED, that the complaint herein be and it is hereby dismissed without prejudice to the commencement of a similar suit in the Courts of Finland, on condition that both Vaasa Line Oy and Partenreederei M.S. "URSULA JACOB" submit to the jurisdiction of the Courts of Finland without raising any defenses based on laches or time bars, provided such jurisdiction is invoked by plaintiff in a reasonable time, and provided that defendant shipowner deposit a bond in Finland equal to the one in this action

and incorporating the same terms and conditions.

Dated: New York, New York
June 20, 1975.

U. S. D. J.

A 202 Affidavit of Personal Service of Papers — LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

KOOPERATIVA FORBUNDET, STOCKHOLM,

Plaintiff-Appellant,
- against -

VAASA LINE OY, ETC.,

Defendant-Appellee.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

I, James A. Steele *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 310 W. 146th St., New York, N.Y.

That on the ~~23d~~ 24th *day of* October *1975 at* 1) Haight Gardner Poor & Havens
1 State Street Plaza, N.Y., N.Y.
2) Ci[illegible]nowicz & Callan
80 Broad Street, N.Y., N.Y.

deponent served the annexed Appt. *upon the* Attorneys *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein.*

Sworn to before me, this 24th
day of October *19* 75

Robert T. Brin

James A. Steele
JAMES A. STEELE

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977

10?-B